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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

11 Cr. 62 (PAC)

DONNA LEVY,  
DAVID LEVY,

Jury Trial

Defendants.

New York, N.Y.  
March 6, 2013  
12:07 p.m.

Before:

HON. PAUL A. CROTTY

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

CARRIE H. COHEN

HOWARD S. MASTER

Assistant United States Attorneys

HOWARD M. SREBNICK

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Attorneys for Defendant Donna Levy

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Attorneys for Defendant David Levy

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1 (A jury of 12 and 4 alternates was impanelled and  
2 sworn)

3 THE DEPUTY CLERK: They have been sworn, your Honor.

4 THE COURT: Please sit down.

5 What I'm going to do now is give you some preliminary  
6 instructions which I hope will be helpful to you in following  
7 this case. After that we're going to take our luncheon break.  
8 It's a little bit early today. Normally we sit until 12:45,  
9 but we're going to break a little bit early today. And then  
10 when we come back, I think we can resume at 1:30, 1:45, and  
11 we'll have openings by the government. And if the defendants  
12 choose to make an opening, we're going to have an opening by  
13 them as well.

14 But while taking our break, Mr. Ovalles will get you  
15 our contact information and try to get contact information for  
16 you so that we can stay in touch in case there's any problems  
17 with weather or someone is having an individual problem, you  
18 can let us know.

19 But I want to take a few minutes now to give you some  
20 initial instructions about this case and about your duties as  
21 jurors. At the end of the trial, I'll give you final  
22 instructions. I may also give you instructions during the  
23 trial. Unless I specifically tell you otherwise, all such  
24 instructions, both those I give you now and those I give you  
25 later, are equally binding on you and you must follow my

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1 instructions.

2 Your duty is to find from the evidence what the facts  
3 are. You and you alone are the judges of the facts and then  
4 you apply the law as I give it to you to the facts as you find  
5 them and to reach your verdict. You have to follow the law  
6 whether or not you agree with it.

7 Now, please remember that nothing I may say or do  
8 during the course of the trial is intended to indicate to you  
9 or should be taken by you to be indicating what your verdict  
10 should be. What your verdict should be is strictly up to you.

11 I've already told you briefly about the charges in  
12 this case. The defendants are charged with the commission of  
13 federal crimes under an indictment filed by a grand jury  
14 sitting in this district. The indictment charges Donna Levy  
15 and David Levy with four separate crimes, which are known as  
16 counts. Donna Levy is also charged with one additional crime,  
17 and David Levy is charged with two additional crimes.

18 I will now elaborate on the relevant facts as alleged  
19 in the indictment.

20 The government alleges that from 2007 to 2010, Donna  
21 Levy and David Levy participated in a scheme to defraud  
22 founders of and investors in and to manipulate the stock price  
23 of two companies: Cardiac Networks Inc. and Banneker Inc. The  
24 defendants are alleged to have made or caused to be made  
25 fraudulent misrepresentations to gain the trust of officers and

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1 employees of these two companies and to induce outside  
2 investors to purchase shares of these two companies in order to  
3 enrich themselves and others who held shares of Cardiac  
4 Networks and Banneker stock.

5 The defendants are charged with a conspiracy to commit  
6 securities fraud and wire fraud and with committing securities  
7 fraud. A conspiracy or agreement among more than one person to  
8 commit a crime is a separate offense from the commission of the  
9 underlying crime itself. Accordingly, as here, the defendants  
10 may be charged both with a crime and with conspiring with  
11 others to commit that crime.

12 The government additionally alleges that from 2009  
13 through 2011, David Levy participated in a similar scheme to  
14 defraud founders of and investors in a third company, Greenway  
15 Design Group Inc. The government also alleges that from 2009  
16 through 2010, David Levy participated in a money laundering  
17 conspiracy by transferring the proceeds of these schemes to  
18 Panama in an attempt to disguise the source of this money.

19 Finally, the government alleges that from 2007 through  
20 2010, Donna Levy defrauded investors in and manipulated the  
21 stock price of additional companies, including Emerging World  
22 Pharma Inc.

23 Defendants deny those allegations.

24 The evidence from which you're going to find the facts  
25 will consist of the testimony of witnesses from this chair

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1 here -- they'll be sworn as witnesses and they'll have to tell  
2 you the truth. You have to judge their credibility --  
3 documents and other things that will be received in evidence,  
4 and occasionally there will be facts that the parties may agree  
5 to. Those are called stipulations. So the evidence consists  
6 of the testimony, the documents, and any stipulations.

7 Certain things are not evidence and you should not  
8 consider them. I'm going to list them for you.

9 First of all, the attorneys' statements, arguments,  
10 and questions are not evidence. They're not sworn as  
11 witnesses. It's not the question that the lawyer asks; what is  
12 important is the witness's answer to the question.

13 Secondly, attorneys' objections to questions are not  
14 evidence either. It is the duty of the attorney for each side  
15 in the case to object when the other side offers testimony or  
16 other evidence that the attorney believes is not properly  
17 admissible. You should not be influenced by the objection or  
18 by my ruling on it. If the objection is sustained, you will  
19 hear me say sustained. Then you should ignore the question.  
20 If I overrule the objection, then you should treat the answer  
21 just like any other answer.

22 My job is to rule on what evidence comes in at trial,  
23 but I have no view on what your verdict should be because your  
24 verdict is strictly up to you, as the jury decides those  
25 questions.

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1           If I instruct you that some items of evidence are  
2 being received for a limited purpose only, you must follow that  
3 instruction as you have to follow all my instructions. You  
4 don't have to worry about this right now. There may not be a  
5 limiting instruction in this case. But if there is, I will  
6 explain it to you at the time and I will give you instructions  
7 as clear as I possibly can and what the limitations are.

8           In addition, I may tell you that I'm excluding  
9 evidence or tell you to disregard testimony. When I do that,  
10 it means you should follow my instructions and ignore the  
11 testimony because it is not in evidence.

12           In addition, anything you may have seen or heard  
13 outside the courtroom is not evidence and should be  
14 disregarded. You are to decide this case solely on the  
15 admissible evidence that is presented here in the courtroom.

16           Now, there are two kinds of evidence that I want to  
17 review with you: direct evidence and circumstantial evidence.  
18 Direct evidence is, as the name suggests, direct proof of a  
19 fact. An example would be the testimony of an eyewitness,  
20 somebody who actually saw the event as it occurred.  
21 Circumstantial evidence is proof of a fact or facts from which  
22 you may infer or conclude that some other fact or facts exist.  
23 Obviously, I'll give you further instructions on this in more  
24 detail, these and other matters, at the end of the case. But  
25 just keep in mind that you can consider both kinds of evidence,

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1 both direct evidence and circumstantial evidence.

2 A very important task for every jury is to determine  
3 the credibility of witnesses. It's going to be up to you to  
4 decide which witnesses to believe, which witnesses not to  
5 believe, and how much of any witness's testimony to accept or  
6 to reject. Again, in my instructions to you at the end of the  
7 trial, I'll give you some guidelines which I hope will be  
8 helpful to you in determining witness credibility. But witness  
9 credibility is something that's uniquely for the jury. You  
10 have to make up your mind who to believe or how much to believe  
11 or not believe of any witness's testimony.

12 Now, this is a criminal case, as we've told you  
13 before, and you must remember that there are three basic rules  
14 about criminal cases that you have to keep in mind at all  
15 times: First, the defendants are presumed innocent; second,  
16 the government has the burden of proof; and, third, the  
17 government must prove its case beyond a reasonable doubt.

18 Let me go through each of those three elements now.

19 First, as I mentioned earlier, the defendants are  
20 presumed innocent until proven guilty. The indictment against  
21 the defendants brought by the government is only an accusation  
22 and nothing more. It is not proof of guilt or anything else.  
23 The defendants, therefore, start out with an absolutely clean  
24 slate. They are presumed innocent.

25 Second, the burden of proof is on the government. The

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1 defendants have no burden to prove their innocence or to  
2 present any evidence or to testify at all. Since they have the  
3 right to remain silent, the law prohibits you from arriving at  
4 your verdict by considering that the defendants may not have  
5 testified.

6 And, third, the government must prove the defendants'  
7 guilt beyond a reasonable doubt. Again, I will give you  
8 further detailed instructions on this point later on, but bear  
9 in mind in this respect a criminal case is different from a  
10 civil case. The criminal standard of proof is proof beyond a  
11 reasonable doubt.

12 Now, just a few words about your own conduct as  
13 jurors.

14 First of all, do not discuss the case with anyone or  
15 permit anyone to discuss it with you. This includes discussing  
16 the case in person, in writing, by phone, electronic means,  
17 text messages, email, Facebook, Twitter, or blogging. This  
18 also includes discussing the case with your fellow jurors. You  
19 cannot deliberate on your verdict until after you are charged  
20 by me and that takes place at the end of the trial. Until  
21 then, you simply cannot talk about this case. So you can talk  
22 to each other about almost anything you'd like, but don't talk  
23 about the case.

24 I know that seems strange to you but here's the  
25 reason. Obviously, the evidence can be presented only one



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1 witness at a time and one exhibit at a time. We don't want to  
2 start talking to each other and reaching conclusions before  
3 you've had the opportunity to see and hear all the witness in  
4 the case and hear my instructions on the law. So that is why  
5 we direct you to begin your deliberations at the end and until  
6 that time not to have any discussions about this case. Think  
7 of it like a painting where you cannot tell from one stroke or  
8 one color what the painting will look like. You have to wait  
9 until it's finished to make a judgment. That's what we ask you  
10 to do.

11 If at any time during the course of this trial any  
12 person attempts to talk to you or communicate with you about  
13 the case, either inside or outside the courtroom -- and I hope  
14 that doesn't happen -- you should immediately report such an  
15 attempt to me. Don't bring it to the attention of another  
16 juror; just send me a note directly.

17 Also, the lawyers and other participants at counsel  
18 table for both the government and the defendants, they have  
19 been instructed not have any communication with you as jurors.  
20 That's the rule. You must not say hello or even wave. That  
21 goes for you, the lawyers, and the witnesses. In this court  
22 you're bound to see people standing in line or being in the  
23 elevators. So if you run into one another, please don't  
24 acknowledge them or expect them to acknowledge you. They are  
25 under instructions not to have any communication and they're

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1 going to observe that rule and we ask you to observe the rule  
2 as well.

3 Don't read or listen to anything touching upon this  
4 case in any way. Don't try to do any research on your own or  
5 conduct your own investigation. This means, for example, that  
6 you should not consult a dictionary, search the internet,  
7 website, blogs, or any electronic tools to obtain information  
8 about this case. If you see something on the case, about this  
9 case in the newspaper, please don't read the article. Don't  
10 watch television discussions about this case or issues involved  
11 in this case. Your sworn duty is to decide this case solely  
12 and wholly on the evidence presented in the courtroom.

13 Now, if you wish, you can take notes while the  
14 evidence is being presented to you. This is permitted because  
15 some people find taking notes helps them focus on the testimony  
16 being given. You should not try to summarize the testimony,  
17 however. We have an excellent court reporter here -- Ms. Jones  
18 and Mr. Murray -- who take down everything that's said  
19 throughout the trial. Your job is to listen to the testimony  
20 and assess the credibility of the witnesses. If you do take  
21 notes, don't let it distract you from your task.

22 Moreover, your notes are for your private use only, as  
23 a way to help you recall the testimony when you begin your  
24 deliberations. Your notes are not entitled to any greater  
25 weight than the recollections of a juror who did not take

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1 notes. Finally, you cannot take your notes out of the  
2 courthouse. Leave them in the jury room at the end of each  
3 day.

4 As I mentioned to you, we hope to get this case done  
5 in the month of March. Let me tell you again how important  
6 your service is and how much we appreciate it. During a trial,  
7 all of us have to be here before any work can be done. You saw  
8 that this morning when we were a little bit slow in calling the  
9 court reporter. That means everybody -- the attorneys, the  
10 witnesses, the court reporter, me, the judge, and you, the  
11 jury -- we have to be here and all of us have to be here at one  
12 time. If one person is missing, everything stops. So we ask  
13 you to cooperate and try to make sure that you get here on time  
14 so that we can begin our deliberations.

15 I start my trial day at 10 a.m., but we're going to  
16 open up the jury room at 9 o'clock and provide you with a light  
17 continental breakfast. We'll have coffee and tea, fruit, and  
18 rolls. That's an inducement for you to get here on time. You  
19 don't have to start the day worrying about your lunch. We'll  
20 provide you with an afternoon snack as well -- again, tea and  
21 coffee and cookies. But we can't provide you with lunch until  
22 you begin your jury deliberations.

23 Now, here's how we're going to proceed. The  
24 government is going to make an opening statement, which is an  
25 outline of what they hope to prove and to help you understand

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1 the evidence as it comes in. Next, the defendants may make an  
2 opening statement but they don't have to. And please remember  
3 as you listen to the opening statements that they are not  
4 evidence.

5 Then the government will start presenting its  
6 witnesses and the defense may cross-examine those witnesses.  
7 Following the government's case, the defendants may, if they  
8 choose and if they wish to do so, present witnesses. They have  
9 no obligation to do so.

10 After all the evidence is in, each side will have an  
11 opportunity to get up again and present their closing arguments  
12 to you. In these arguments, they're going to summarize and  
13 interpret the evidence for you.

14 And then, of course, I'll instruct you on the law.  
15 And after all that is completed, you can retire to begin your  
16 deliberations.

17 Now for some housekeeping matters. You probably  
18 already met my courtroom deputy, Mr. Ovalles, and Mr. Ovalles  
19 will tend to whatever your needs are during the course of this  
20 jury trial. And Mr. Ovalles, as I said, when we break now,  
21 we'll be interested in getting some contact information from  
22 you and we'll give you our contact information so we can stay  
23 in touch with one another. My court clerk who's working with  
24 me on this case is Mr. Kelly, who's in the back. And our court  
25 reporters are Tara Jones, who's sitting here, and Mr. Murray,

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1 who was here this morning.

2 So those are my preliminary instructions. It's now  
3 12:20. We're going to break. Mr. Ovalles will escort you to  
4 the jury room and you can hang up your clothes there and your  
5 coats and then we'll take our break. We'll resume -- if we can  
6 resume at 1:45, we'll have openings by the government and any  
7 openings the defendants wish to make, and then we'll start with  
8 our witnesses this afternoon. Thank you very much.

9 (Jury not present)

10 THE COURT: All right. Anything you want to take up?

11 MR. SHARGEL: Two very short housekeeping matters.

12 THE COURT: Yes, sir.

13 MR. SHARGEL: One is that with respect to the  
14 openings, and I suppose it applies to the closing arguments as  
15 well, would the two defense counsel be permitted to decide  
16 between themselves as to who goes first and who goes second?

17 THE COURT: Yes.

18 MR. SHARGEL: And with respect to cross-examination of  
19 witnesses, can we do the same thing?

20 THE COURT: Yes.

21 MR. SHARGEL: Thank you, sir.

22 THE COURT: Only one lawyer per --

23 MR. SHARGEL: Of course. The point is that I was  
24 going to open first and Mr. Srebnick was going to open after  
25 me. And then when, for example, Zev Helfer, one of the

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1 witnesses we expect this afternoon, who will testify this  
2 afternoon, I'm going to do the first cross-examination.

3 THE COURT: That's fine with me.

4 MR. SHARGEL: Very well.

5 THE COURT: My observation is I wouldn't want you to  
6 start, get halfway through a witness, and have someone pick up  
7 the same witness on your team.

8 MR. SHARGEL: Oh, no, no. We won't do that. I  
9 promise you we won't do that.

10 THE COURT: Mr. Master, who are the first set of  
11 witnesses going to be?

12 MR. MASTER: The first two witnesses are Peter Melley  
13 of FINRA, and Zev Helfer, the founder, one of the founders of  
14 Cardiac Networks.

15 THE COURT: Who's coming first?

16 MR. MASTER: Peter Melley.

17 THE COURT: We'll get through him today?

18 MR. MASTER: Certainly our direct is not very long.

19 THE COURT: Yes.

20 MR. SHARGEL: Your Honor, I was just told that the MCC  
21 will not honor your order as to the clothes that Mr. Levy needs  
22 for the next day. You might see he's been in the same suit.  
23 He did get a shave this morning, but this is very difficult  
24 circumstances. He's still in SHU.

25 THE COURT: But his other needs have been

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1 accommodated?

2 MR. SHARGEL: No pencil and paper in SHU and it's very  
3 difficult circumstances. I know the government is working on  
4 this and I've been in. They're keeping me updated every step  
5 of the way, but, nevertheless, we still have this situation.

6 THE COURT: What's the nature of the noncompliance?

7 MR. SHARGEL: I have an order that your Honor signed I  
8 guess this morning and --

9 THE COURT: I had one problem with the order. One was  
10 it said MCC and it was MDC. It was addressed to one facility  
11 and he's in the other facility.

12 MR. SHARGEL: Now they won't take it because there are  
13 cross-outs here by hand and it's not typed in.

14 THE COURT: Whose cross-outs are they?

15 MR. SHARGEL: In other words, it was crossed out from  
16 MDC to MCC.

17 THE COURT: So you want us to white it out and type it  
18 out?

19 MR. SHARGEL: I think they want a fresh order. If we  
20 can have this by this afternoon, I'll have someone go over.

21 THE COURT: Listen, I signed the order. I thought the  
22 order on its face was misdirected because you gave it to the  
23 warden over in Brooklyn and Mr. Levy is in Manhattan.

24 MR. SHARGEL: It was prepared when he was in Brooklyn.  
25 You know he was in Brooklyn.

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1 THE COURT: He's moved, so, you know, they're kind of  
2 persnickety at the Bureau of Prisons.

3 MR. SHARGEL: I'm persnickety?

4 THE COURT: No, Bureau of Prisons.

5 MR. SHARGEL: Oh.

6 THE COURT: If you correct it, if that's the  
7 objection, why don't you correct it and I'll sign the order  
8 again.

9 MR. SHARGEL: Very well. I don't have a printer here  
10 but perhaps we can --

11 THE COURT: Do you want us to?

12 THE LAW CLERK: I'll just type it.

13 THE COURT: Who's getting the order, give it to the  
14 government, give it to you?

15 MR. SHARGEL: If you give it to us, we'll be here.  
16 Ms. Hays will be up here. We're going to have a fast lunch and  
17 come back to the courtroom.

18 THE COURT: That's what we'll do then.

19 MR. SHARGEL: Thank you.

20 (Luncheon recess)

21 (Continued on next page)



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AFTERNOON SESSION

1:45 p.m.

(Jury not present)

(At the side bar)

THE COURT: I have a note from Ms. Genevieve Shuler. I think she is Juror No. 2. At any rate, she sends this note which I want to call to everyone's attention. I think it is just extraordinary caution on her part. I don't see any problem. Does anybody see a problem?

MR. SHARGEL: I don't see a problem.

MR. SREBNICK: No.

THE COURT: I'll mark it as a court exhibit and make it part of the file. The jury is all here. Are we all ready to go? You found the podium?

MR. SHARGEL: I did.

THE COURT: It was missing before.

(In open court; jury present)

THE COURT: Mr. Master.

MR. MASTER: Thank you, your Honor.

Ladies and gentlemen, I wanted to start out by thanking you for your patience during jury selection and for your service as jurors and for your patience during the course of the trial. I'm Howard Master. I'm an Assistant U.S. Attorney here with the Southern District of New York. I'm going to give an opening statement that lays out some of the

## Opening - Mr. Master

1 evidence that I expect you will hear over the course of the  
2 case.

3           These two defendants, David Levy and Donna Levy, they  
4 made millions upon millions of dollars from deception, lies,  
5 and greed. They preyed on small business people trying to  
6 realize their dreams. They pretended to be good-faith  
7 investors. They pretended to care about these businesses'  
8 long-term success.

9           They used cash from other frauds and other people to  
10 get cheap stock in these businesses, and then they teamed up  
11 and they worked with a network of other stock fraudsters to  
12 pump up, or increase, the price of these stocks in those  
13 companies so they could dump, or sell, their own shares into  
14 the market at a huge profit.

15           This kind of scheme, ladies and gentlemen, is called a  
16 pump and dump stock fraud. The defendants used that scheme to  
17 defraud business after business, investor after investor.  
18 Along the way they told lie after lie to the businesses,  
19 owners, and managers, the founders of those companies, and they  
20 deceived the investing public again and again.

21           By the time the defendants were done, they had  
22 pocketed millions while small business owners and the investing  
23 public were left with huge losses. To ensure that nobody would  
24 get their hands on some of the profits from that stock fraud,  
25 David Levy laundered some of the proceeds of that scheme using

## Opening - Mr. Master

1 shell company bank accounts in Panama.

2 Ladies and gentlemen, at this trial the defendants'  
3 deception, their lies, and their greed will be exposed by their  
4 own voices on tape, by victims of their crimes, by other  
5 witnesses, and by trading records and other evidence, all  
6 leading to one conclusion: That these two defendants are  
7 guilty as charged. That's why we are here. That's what this  
8 trial is about.

9 Before I continue, I've already introduced myself.  
10 I'm an Assistant U.S. Attorney here in the Southern District of  
11 New York. With me at counsel table is Assistant U.S. Attorney  
12 Carrie Cohen, IRS criminal investigations Special Agent Richard  
13 Reinhardt, paralegal specialist Michael Dinot with our office,  
14 and task force officer Anthony Maddalone. We are the trial  
15 team. Together it is our privilege and our responsibility to  
16 present the government's case and to prove the defendant's  
17 guilt beyond a reasonable doubt.

18 The opening is just our opportunity to give an  
19 overview of what the government expects the evidence to prove  
20 so that as the evidence comes in, you will begin to see how it  
21 all fits together. Don't worry if you don't remember every  
22 detail of what I say today, because it will all make sense at  
23 the end of trial.

24 Let me give you an overview of what I expect the  
25 evidence will show about the defendants' crimes. Then I'll

## Opening - Mr. Master

1 explain how we intend to prove it. We are going to focus over  
2 the course of this trial on four companies whose shares one or  
3 both of these two defendants helped to pump and dump: Cardiac  
4 Networks, which is a heart monitoring company; Banneker  
5 Incorporated, which is a designer watch company; Greenway  
6 Design Group, which makes energy saving devices; and an alleged  
7 company called Emerging World Pharma.

8           You are going to meet the business people who founded  
9 and worked so hard to build Cardiac Networks, Banneker, and  
10 Greenway design. You are going to learn that at the time they  
11 met the Levys, they had big dreams. What they needed to make  
12 those dreams a reality was seed money, seed money to invest in  
13 real products and real services, to hire staff, to tell the  
14 public about the real things that they made and did and why  
15 people should buy them.

16           You will also learn that in each case David Levy  
17 approached these small business people with a similar  
18 proposition. He would take the company to the next level, he'd  
19 provide funding, he would take these companies public. All he  
20 asked for in return was some of the business's stock and the  
21 right to buy more. He said he was in it for the long haul.

22           Donna Levy, on the other hand, she told these small  
23 business people who founded Cardiac Networks and Banneker that  
24 she knew how to handle publicity and investor relations, and  
25 she offered to do it for these two businesses.

## Opening - Mr. Master

1           You will learn that the founders of these two  
2 companies were not experts on the stock market, they weren't  
3 experts in public relations or in running a publicly traded  
4 business, and the Levys were offering the money and the  
5 expertise that they needed to make their dreams a reality. So,  
6 after meeting with the Levys and hearing what they offered, in  
7 each case they took the deal.

8           But you will learn that in each case, once these  
9 unsuspecting small business people accepted the Levys' money,  
10 they took care of the rest, the Levys. They took each of the  
11 companies public using shell companies, a term called a reverse  
12 merger that you will hear about, and he awarded himself  
13 millions of shares in each of those companies in the process.  
14 He arranged for the stocks to trade on what is known as the  
15 pink sheets market with other penny stocks, that is, other  
16 stocks with low share prices and low visibility.

17           Once the Levys got their hands on that stock and  
18 arranged for it to be publicly traded, they carried out the  
19 same pump and dump scheme again and again with each of those  
20 companies. They did it multiple times with each company. On  
21 at least three occasions with Cardiac Networks, that stock,  
22 2007, 2009, and 2010, and on at least two occasions with  
23 Banneker stock, in 2008 and 2009. David Levy artificially  
24 inflated the price of Greenway design on two separate occasions  
25 in 2011.

## Opening - Mr. Master

1           The Levys made millions upon millions of dollars off  
2 of these manipulation schemes.

3           How did they manipulate the stock price and make those  
4 millions? You will hear that they worked with a network of  
5 other stock fraudsters to artificially inflate the price of the  
6 stock they had gotten from these small businesses. They used  
7 that network to send out thousands upon thousands of email  
8 blasts containing false statements and half-truths to the  
9 investing public. They arranged for people to post positive  
10 information on investor websites and Internet message boards  
11 concerning these companies.

12           In coordination with the Levys, members of their  
13 network, they would buy shares in the companies to make it look  
14 like the demand was going up, and other members of the network  
15 would sometimes sell stock to make money that they would split  
16 with the Levys.

17           They timed it all to coincide with the press releases  
18 that the companies were issuing, in many cases press releases  
19 that were drafted and issued by Donna Levy herself, so that  
20 investors would think that there were legitimate developments  
21 in these companies, legitimate reasons why the company was  
22 doing well and the stock price was soaring.

23           You will learn that the defendants spent lots of money  
24 on these coordinated campaigns to pump up the stock price. You  
25 will learn that it was far more money than they spent on these

## Opening - Mr. Master

1 businesses that they supposedly cared about to promote real  
2 products and real services.

3 Ladies and gentlemen, guess what happened when the  
4 defendants stopped spending all that money to pump up the plies  
5 of those stocks? The price of those stocks collapsed again and  
6 again each time. And they knew that it would, because they did  
7 it again and again.

8 But, ladies and gentlemen, the price collapse happened  
9 after the Levys had already cashed in. Meanwhile, the  
10 investors who had believed the defendants' hype machine and the  
11 small businessmen who founded these companies and who worked so  
12 hard to build them and who had what is known as restricted  
13 stock in these companies, stock they couldn't sell during these  
14 campaigns at all because they were company insiders, they were  
15 left holding worthless stock. And when these business people  
16 asked what happened, the Levys lied. They denied they were  
17 selling and they blamed others because they didn't want the  
18 truth to come out.

19 Ladies and gentlemen, what happened with all of the  
20 money that the Levys made from this scheme? They gave some of  
21 it to the businesses they supposedly believed in, but not  
22 nearly enough to keep the businesses from going in the red and  
23 eventually running out of cash. And while they were telling  
24 these businesses that they didn't have enough cash to continue  
25 funding them, they spent millions on themselves: On a huge

## Opening - Mr. Master

1 waterfront home in Florida, on luxury vehicles, on hundreds of  
2 thousands of dollars in credit card bills, on money-losing  
3 movie and TV projects.

4           You will hear that the defendants' scheme was exposed  
5 after Donna Levy got caught on a court-authorized wiretap  
6 manipulating the price of the fourth company that I mentioned  
7 earlier, Emerging World Pharma. She was captured on tape  
8 talking about pumping up the price of that stock. She also  
9 talked on that wiretap about future deals in a way that leaves  
10 no doubt about her role.

11           You will see that the price of Emerging World Pharma  
12 more than tripled in a matter of days, generating at least a  
13 quarter million dollars in fees for Donna Levy while investors  
14 who bought on the basis of that promotional campaign that she  
15 orchestrated were left with huge losses.

16           In the fall of 2010 Donna Levy was arrested and the  
17 Levys' Florida home was searched, turning up evidence of the  
18 scheme. You will learn that after Donna Levy was arrested,  
19 David Levy carried out that same scheme again, that scheme with  
20 Greenway design that I mentioned earlier. You will learn that  
21 David Levy made more than \$5 million manipulating the price of  
22 Greenway design in the space of a few months in 2011, after his  
23 wife was arrested.

24           Ladies and gentlemen, what the defendants did was  
25 wrong, but it was also criminal. You see, it's a crime to



## Opening - Mr. Master

1 deceive small business people so that you can get rich while  
2 they take huge losses. It's a crime to trick the investing  
3 public into buying shares of stock from you at prices that you  
4 know are inflated because you're the one who inflated them in  
5 the first place.

6 When you lie to and deceive people in connection with  
7 the purchase and sale of stock, like these two defendants did,  
8 that's securities fraud. And when you carry out a scheme to  
9 defraud using the Internet, wire transfers, wire  
10 communications, a scheme like the one the defendants carried  
11 out again and again and again, that's called wire fraud.

12 You will learn that David Levy tried to hide over  
13 \$2 million of his profits from stock fraud in Panamanian shell  
14 companies that were set up by a money launderer. You will hear  
15 that agents obtained records tying David Levy to the accounts,  
16 and they got that money launderer to make secret recordings  
17 with David Levy in which David Levy admitted that the money was  
18 his, that it was obtained from stock promotion activities, and  
19 that he couldn't let the bank know the true source of that  
20 money. You will hear these tapes at the trial.

21 That, ladies and gentlemen, is money laundering. It's  
22 a separate crime. And that's why we are here.

23 Now that you have heard what the case is about, let me  
24 take a few minutes to explain to you how the government is  
25 going to prove this to you. First, you're going to hear from

## Opening - Mr. Master

1 representatives of those first three small businesses that I  
2 mentioned: Cardiac Networks, Banneker, and Greenway Design.  
3 The government expects that their stories will be remarkably  
4 consistent even though they are in different industries, in  
5 different parts of the country, and they have no real knowledge  
6 of each other and how each was defrauded by the same people,  
7 these two defendants.

8           They are going to tell you how David Levy and, in the  
9 case of Cardiac Networks and Banneker, Donna Levy came to them  
10 with all the outward signs of success, with up-front money and  
11 a promise of more to come. You will learn that that up-front  
12 money and the defendants' nice house, nice cars, signs of  
13 success, they were essential reasons why these small business  
14 people trusted the Levys, why they believed that the Levys had  
15 the resource to come through and were in it for the long haul.

16           You will hear how the founders and the managers of  
17 those companies who had worked so hard to build those  
18 businesses, how they knew nothing about the misleading  
19 promotional campaigns that the Levys orchestrated to  
20 artificially inflate the price of their stock for the Levys own  
21 financial gain.

22           You will hear how the Levys lied when the stock  
23 dropped by denying that they were selling. You will hear how  
24 David Levy forged document after document in the name of his  
25 sister Yael Levy Tal in the name of this scheme. You will hear

## Opening - Mr. Master

1 how these small business people were left holding essentially  
2 worthless stock in these companies that they had built while  
3 the Levys made millions.

4           You will also hear from outside investors who were  
5 tricked by the defendants' promotional schemes and who lost  
6 big. You will get to see press releases that Donna Levy issued  
7 herself or helped issue for Cardiac Networks and Banneker. You  
8 will see examples from the misleading promotional campaigns  
9 that the Levys timed to coincide with those press releases and  
10 with their stock sales so that they could stack the deck in  
11 their favor. You will see similar timing with Emerging World  
12 Pharma and Greenway Design as well.

13           You will also hear from people who heard the Levys and  
14 members of their network talk about how they carried out their  
15 scheme. Some of these people are what is known as cooperating  
16 witnesses for the government. They are people who have  
17 committed crimes. They are testifying in hopes of getting a  
18 lesser sentence at the end of the day. Some of these people  
19 have committed fraud, some with the Levys, and some have even  
20 lied to the government before.

21           For these reasons, you should scrutinize those  
22 people's testimony carefully. And when you do, you will find  
23 that what they tell you is backed up, corroborated, by all of  
24 the other evidence in this case, by the Levys' own words caught  
25 on tape, by trading records and charts showing how those stocks

## Opening - Mr. Master

1 got pumped and dumped again and again and again, and how the  
2 Levys profited again and again and again in response to those  
3 misleading promotional schemes, by their orchestrated fraud.

4 You will hear from victims, both small business people  
5 and outside investors, who got scammed by the Levys.

6 Ladies and gentlemen, these two defendants, David Levy  
7 and Donna Levy, they cheated small business people out of their  
8 dreams. They cheated investors in these businesses. They  
9 cheated others out of their money. They cheated the public  
10 markets by manipulating the stocks in these businesses again  
11 and again and again. They made millions of dollars doing it,  
12 some of which David Levy tried to hide by laundering it in  
13 Panama.

14 During this trial you will hear recordings of the  
15 defendants, you will see a lot of documents, you will hear from  
16 many witnesses. You will see and hear the evidence of the  
17 defendants' deception, their lies, their greed. As this trial  
18 unfolds, I ask you to do three things. First, please pay  
19 careful attention to the evidence. Second, listen carefully to  
20 the judge and follow all of his instructions on the law.

21 And third, please use your common sense, the same  
22 common sense you use in your everyday lives. It serves you  
23 equally well here. When you do that and you do the other two  
24 things that I mentioned, it is going to lead you to the only  
25 conclusion that is consistent with the facts and the law, and

## Opening - Mr. Shargel

1 it's that these two defendants are guilty as charged.

2 Thank you.

3 THE COURT: Thank you, Mr. Master.

4 Mr. Shargel.

5 MR. SHARGEL: Yes. May it please the Court.

6 THE COURT: Yes, sir.

7 MR. SHARGEL: Counsel, ladies and gentlemen of the  
8 jury, I want to say it as emphatically as I can say it: David  
9 Levy is an investor. He's not a fraudster. He's not a day  
10 trader. He's not a stock manipulator. He's not a liar. He's  
11 not a pump and dump person. He did not BS anyone.

12 You know, there was one thing that Mr. Master said,  
13 but he said it quite low. Even with the benefit affect  
14 microphone, he said it quite low. He said some of the people  
15 who will be called before you as witnesses lied. He said it so  
16 softly.

17 You're going to hear again and again and again that  
18 these people, people who weren't named by Mr. Master, people  
19 who, according to Mr. Master, were working hard to create a  
20 business, working hard to create a business, David Levy  
21 targeted them and David Levy fooled them and David Levy  
22 deceived them. I say to you, ladies and gentlemen, that that  
23 will never be proven, let alone proven beyond a reasonable  
24 doubt.

25 I say to you, ladies and gentlemen, that in the days

## Opening - Mr. Shargel

1 ahead and with the proof that you see and the documents that  
2 you see, it will be crystal clear that David Levy never set out  
3 to deceive anyone, and again and again he was deceived by  
4 hucksters and fraudsters themselves, people who the government  
5 lawyer just said to you were the hard-working people creating  
6 businesses.

7 Let's talk about this. I'm going to be a little more  
8 specific. I'm not going to talk in vague generalities. I'm  
9 not going to paint on a canvas of generalities about how  
10 wealthy they are and how are we to react to that, and how much  
11 money they spent and how are we to react to that, and how much  
12 they gained from this work, how are we to react to that. I  
13 want to talk about specifics.

14 David Levy, as I said a moment ago, is an investor.  
15 These are situations that you are well familiar with,  
16 situations that you are well familiar with. He invested, as  
17 you will see from the evidence in this case, in the  
18 entertainment world.

19 He invested not only, what did Mr. Master say, in  
20 businesses that failed. Yes, he has invested in businesses  
21 that failed, like all investors. But he has invested and has  
22 achieved by hard work and diligence and perseverance and  
23 industry of his own an enormous success.

24 There is no reason in 21st century America to  
25 apologize for that. He has achieved again and again and again.

## Opening - Mr. Shargel

1 He has produced feature films. He has promoted rock concerts.  
2 He had a reality TV show on a major cable network. He has  
3 again and again showed diverse and interesting leadership and  
4 involvement in significant companies.

5 He also invested in what are called startup companies.  
6 Each and every one of you are familiar with startup companies.  
7 There is nothing unusual about that. A new business. Yes,  
8 this is the land of hope and dreams. Yes, a new business that  
9 was striving to get off the ground.

10 But it wasn't always operated, as you will see and as  
11 I will go into more detail, it wasn't always operated by people  
12 of good will and good intention. You will find that from the  
13 evidence in this case.

14 These startup companies would come to David Levy. And  
15 let me make that clear. The charges are, as I think that Mr.  
16 Master referred to it, that David Levy and Donna Levy would  
17 target companies and take advantage as if they were some sort  
18 of predator and approached startup companies. That's not what  
19 happened. The opposite was true. People would come to David  
20 Levy because he was known as an investor, I'll give you more  
21 specifics as I go along, because he was known as an investor,  
22 and they would propose a deal.

23 They would propose a deal and they would propose a  
24 business and they would talk about financing that was needed.  
25 They asked him for money. They asked him for investment. And

## Opening - Mr. Shargel

1 they were willing to give him the only thing ultimately that  
2 they had to trade for the money, and that was stock, the only  
3 way that they could secure the investment, the only way.

4 There was no collateral. They couldn't go to a bank.  
5 That's the very point. They had no collateral to take out a  
6 loan for the new business. They had to find willing investors  
7 who were willing to take the risk because some 75 percent, as  
8 you will hear, 75 percent of startup companies fail in America.  
9 75 percent.

10 This was a risk not only for the people involved in  
11 the startup companies, this was a risk not only for the  
12 employees who decided to take low salaries and stock, this was  
13 a risk for David Levy in each and every one of those instances.  
14 And it was David Levy who wanted these companies to work. If  
15 the companies worked. Everyone thought about the next Facebook  
16 or the next Instagram. If the companies worked, there was the  
17 potential for huge success.

18 This was a risk. It was a risk for many reasons. A  
19 startup company could be facing tough competition in the  
20 market. A startup company could suffer from mismanagement. A  
21 startup company could have difficulty developing a product.  
22 But the main problem, the main problem is shortage of money,  
23 shortage of capital. Unless you had a rich family or unless  
24 you had independent wealth, the only way you could deal with  
25 this is to go to an investor.



## Opening - Mr. Shargel

1           The government says that David Levy targeted companies  
2           and he led companies along and the companies were naive.  
3           That's what he said. He said the companies weren't familiar  
4           with the ways of the stock market, they weren't sophisticated  
5           investors themselves, they weren't sophisticated business  
6           people. Nothing could be further from the truth. As you will  
7           see from the evidence in the case, as you will see by the  
8           documents that are put before you, nothing could be further  
9           from the truth.

10           This is an opening statement, and I'm going to tell  
11           you flat-out at this moment that David and Donna Levy committed  
12           no crime. They committed no crime in their business dealings  
13           with Cardiac Network and Banneker. They committed no crime.  
14           That's a bold statement to make.

15           You just heard the government lawyer up here before  
16           you saying that the evidence is going to show this and it's  
17           going to be crystal clear and the evidence will show that and  
18           they will be able to prove their case beyond a reasonable  
19           doubt. I say no, they won't, because the evidence in this case  
20           will show a completely different picture of what occurred.

21           The evidence in this case will show that they weren't  
22           out to fool anyone, to pull the wool over anyone's eyes. David  
23           Levy provided capital and furnished valuable advice based on  
24           years of business experience, and he wasn't dealing with some  
25           naive people trying to put a business together, hard-working

## Opening - Mr. Shargel

1 people.

2 Yes, he received shares, and yes, he was interested in  
3 making a profit. That is because of the risk that he took.  
4 But, again, I don't want to paint with generalities. Now I  
5 want to be specific. Now I want to talk about two of the  
6 companies, Cardiac Networks and Banneker, to show you exactly  
7 what happened.

8 There is only one thing that I will agree on. There  
9 was a similarity or a commonality of events or developments  
10 with respect to both of those companies. I'm going to tell you  
11 specifically what the evidence in this case will show. Cardiac  
12 Network. I'm going to talk to you about the story behind  
13 Cardiac Network and Mr. Levy's involvement and Mrs. Levy's  
14 involvement. Cardiac Network speaks volumes about these  
15 unwarranted, undeserved, and unearned charges that have been  
16 brought against them.

17 I want to tell you a little more than Mr. Master did  
18 about the products that Cardiac Network had. I will introduce  
19 into evidence and I'll show you a film, short, five minutes,  
20 I'll show you a film or video, a promotional video, and we will  
21 talk about that promotional video some more, a promotional  
22 video about this product.

23 It was a fabulous product. A heart patient, believing  
24 that he or she was having a heart attack, could take this  
25 monitor and put thumbs on the electrodes, both thumbs on the

## Opening - Mr. Shargel

1 electrodes, and then by telephone, by telephone, a doctor could  
2 read essentially the equivalent of an EKG and determine whether  
3 the patient was having a heart attack. There was enough  
4 information that was being conveyed via telephone. You didn't  
5 need to wait for the ambulance. You didn't need to decide  
6 whether to call 911. This would enable someone to via phone  
7 get that information to the cardiologist.

8 Cardiac needed money. There is no question about the  
9 fact that this was an important and significant device that had  
10 a very promising future. You will see what the owners of  
11 Cardiac said about the future of that company.

12 The business, Cardiac Network, had almost no revenue.  
13 It had almost no assets. The company needed to sign up doctors  
14 and patients, buy monitors, and advertise their product. As  
15 you know, you can't sell a product without advertising.

16 It's charged that Cardiac Network was supposedly a  
17 target of David Levy and Donna Levy. Let me talk to you about  
18 these companies. Let me tell you that Cardiac Network targeted  
19 David Levy. David Levy did not target Cardiac Network, it was  
20 the opposite.

21 There were some early investors before David Levy got  
22 involved with Cardiac. There were early investors who put up  
23 some money. One person put up 300 or \$350,000, a partner in  
24 the company.

25 Then there was a man by the name of John Fisher. This

## Opening - Mr. Shargel

1 is a name that you are going to hear again from the evidence in  
2 this case. There was a man by the name of John Fisher who put  
3 up a loan of \$20,000, never got it back. He loaned it to the  
4 principal of Cardiac, a man by the name of Zev Helfer. You may  
5 see him on the stand this afternoon. If not this afternoon,  
6 then certainly tomorrow. Zev Helfer was one of the key  
7 partners in Cardiac Networks.

8 John Fisher, the man who loaned \$20,000, was  
9 significant for a reason beyond the loan. John Fisher lived  
10 down the block from David and Donna Levy in Fort Lauderdale,  
11 Florida. He was a neighbor. He was a friend. He called David  
12 Levy on the telephone and said, I'm involved with this company  
13 Cardiac, they need money and they are looking for an investor,  
14 and we would like to come over and make a presentation. David  
15 Levy said come on over and make the presentation.

16 For those of you who have watched Shark Tank, I think  
17 the show is called, a presentation is made, an idea is hatched,  
18 and a case is made as to why the investor should lend the  
19 money. That's what would happen again and again in David  
20 Levy's life. He was an investor, and people came to him and  
21 made proposals and gave him the details of the business,  
22 discussed the financials, discussed the projections, and  
23 discussed the product.

24 So, Zev Helfer is introduced to David Levy through  
25 John Fisher. Zev Helfer comes over to the house, and he brings

## Opening - Mr. Shargel

1 the monitor with him. He brings some facts and figures with  
2 him, and he makes a presentation. David Levy has heard  
3 presentations his whole adult life, presentations, requests for  
4 capital. He either says at the end, I'm in or I'm out, I like  
5 the deal or I don't like the deal.

6 When Zev Helfer walked in with John Fisher to Mr.  
7 Levy's house and Mr. Levy sat down with him, it sounded like a  
8 fabulous idea, as I said before. Even more than sounding like  
9 a fabulous idea, Zev Helfer said that there was a doctor, a Los  
10 Angeles-based doctor named Eli Gang, Dr. Gang, G-A-N-G. Dr.  
11 Gang was a world-known cardiologist, a cardiologist with an  
12 impeccable reputation, known literally throughout the world,  
13 respected and recognized as a top cardiologist throughout the  
14 world.

15 Zev Helfer said to David Levy, you know, Dr. Gang is  
16 going to be, is already -- it's just a startup at that point --  
17 is already our medical adviser, he believes in this company, he  
18 has confidence in what it is that we are doing; this product,  
19 the monitor, was manufactured in Israel from a technology  
20 company in Israel; Dr. Gang said that is a fabulous product and  
21 it has an enormous future.

22 David Levy weighed the prospect. He did his due  
23 diligence. He looked into the efficacy of what had been  
24 promised or suggested or predicted as to what could happen, and  
25 he said, I'm interested, count me in, count me in.

## Opening - Mr. Shargel

1           The next thing that happens is that David Levy goes  
2 out to Los Angeles. He goes out to Los Angeles and has  
3 lunch -- I don't remember if it was lunch or dinner; you will  
4 hear from the testimony -- lunch or dinner with Dr. Gang in  
5 Beverly Hills, at a restaurant in Beverly Hills. Dr. Gang  
6 again tries to persuade David Levy that this is a great  
7 investment, that he himself has affiliated himself with the  
8 company and that this is a great investment.

9           It's clear that they are doing everything they can to  
10 persuade, to persuade David Levy that this is worth his while.

11           You know what David Levy says? And I'll tell you  
12 something. When Zev Helfer is cross-examined, I suggest to you  
13 most respectfully and I ask you most respectfully -- there is a  
14 direct examination and then there is the cross-examination --  
15 do you know what David Levy says? The person whom you heard a  
16 few minutes ago was so greedy, the person who just wanted to  
17 get a quick profit, he didn't care who he threw under the bus,  
18 he just wanted his quick profit, do you know what Zev Helfer,  
19 the principal of Cardiac Networks says to David Levy?

20           First, Mr. Levy says, how much money do you think  
21 you'll need? How much money do you want me to invest? Helfer  
22 says, I think \$400,000 will do it. David Levy said, no, what  
23 you need to establish this network, \$400,000 won't do it, I  
24 will get you a million 2. You need three times that. This is  
25 the person who is greedy and taking money from people and only

## Opening - Mr. Shargel

1     cares about himself. He says, in response to we need 400,000,  
2     Mr. Levy, in words or substance, I'm an experienced  
3     businessman, that is not enough, you need \$1.2 million.

4             Now, there was something about Helfer that didn't seem  
5     exactly right. It's true that he had gone, as Mr. Levy  
6     learned, through a horrible divorce. But he apparently was so  
7     broke that he didn't even have a car to get around down in  
8     Florida or wherever he was living at the time. He didn't even  
9     have a car. He had no money. Other people kicked money into  
10    Cardiac to get it started before David Levy was approached.  
11    They put in their own money, and Zev Helfer put in nothing. He  
12    didn't even have a car.

13            Now, I'm going to get ahead of myself, but I just want  
14    to put one small fact before you, particularly since Mr. Master  
15    was talking about this unbridled greed and these poor people  
16    who were putting startups together. What did he say, working  
17    very hard, worked hard to create, worked hard to create, and  
18    they were lied to.

19            This man who didn't have a car, after David Levy  
20    invested his money -- and I'll come back to it because there is  
21    more to this story -- after David Levy invested his money, this  
22    man who didn't have a car is now driving around in a Porsche,  
23    which he got by spending David Levy's money contributed to the  
24    business for the promotion of the business and the success of  
25    the business. This man who is creating this business goes out

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1 and leases a Porsche for \$1700 a month. Now that's how he's  
2 getting around. That was Mr. Levy's money, because Helfer  
3 didn't have a dime before Mr. Levy furnished that \$1.2 million.

4 David Levy says, as I said a moment ago, count me in.  
5 This trial will spend a lot of time focusing on what happened  
6 next. On what happened next.

7 There were handshakes. Then the handshakes became  
8 term papers and contracts that put the parties' understanding  
9 in writing. Let me tell you this. In 2007 -- because this  
10 meeting is at the beginning of 2007 -- 2008, 2009 Mr. Levy was  
11 not in the business for 15 minutes. The witnesses that you  
12 will see testify here, like Mr. Helfer, will have very  
13 different recollections of what occurred. They will have very  
14 different recollections of promises that were made and  
15 commitments that they say were broken and representations that  
16 they say were false.

17 Let me tell you this. We live in an electronic age.  
18 We all live in an electronic age. Each and every one of us in  
19 this courtroom has entered into contracts at one time or  
20 another. It may be the lease of a car, it may be the lease of  
21 an apartment, it may be something to sell or something to buy,  
22 but each one of us has had contracts at some time in our lives.  
23 If there were ever any question about what the agreement was,  
24 if there were ever any question about what the parties  
25 understood, it was always go back to the contract and see what



## Opening - Mr. Shargel

1 was said at the time of the contract.

2 I say to you that in this electronic age of ours, the  
3 contract is always available, stored in a computer somewhere.  
4 The emails, the text messages, the bank statements, the loan  
5 agreements, the stock certificates, that's all available. Will  
6 the government be putting documents in evidence? Absolutely,  
7 yes, they will. But we'll be putting documents in evidence  
8 also.

9 We will be putting documents in evidence also to show  
10 again and again with incandescent clarity, with incandescent  
11 clarity we will show again and again that the documents speak  
12 for themselves, the signed and executed documents speak for  
13 themselves. The email traffic speaks for itself to show that  
14 there was no fraud or deception of any kind that David and  
15 Donna Levy committed.

16 Mr. Master mentioned that Mr. Levy knew about the  
17 stock market and these were naive people. They weren't naive  
18 people. The documents will show that. The emails will show  
19 that.

20 You heard one thing that I think Mr. Master mentioned,  
21 I don't want to run past it, the reverse merger, the reverse  
22 merger and the idea of going public in penny stocks. Let me  
23 say this. None of that was illegal. Reverse mergers are not  
24 illegal. It made perfect sense for a startup company. You  
25 will hear testimony about that. It made perfect sense as a

## Opening - Mr. Shargel

1 vehicle for people to invest in a startup company.

2 If it is just a private business, a business that was  
3 not public, it's very difficult to get investors. You will  
4 hear people testify that this was an ideal solution for a  
5 startup company, to have stock purchased by the public,  
6 purchased by individuals who also believed in this company.

7 The deal went through at Cardiac Network. The  
8 contracts were signed. The agreements and terms were made  
9 clear. Mr. Levy had free-trading stock, there is no question  
10 about it, and he had a lot of money committed to Cardiac  
11 Network.

12 He expected one thing in return. He expected what any  
13 of you would expect if you made an investment like that, of  
14 well over a million dollars into a company. He expected  
15 loyalty and honest services from the people who owned the  
16 company, including Zev Helfer. That's all he was asking for.  
17 He thought the future was there. The monitors were well  
18 endorsed. The only issue was would he get honest services from  
19 the people who actually owned that company and who originated  
20 that company, and he did not. He did not.

21 Not only was the company mismanaged -- you will see  
22 that Zev Helfer had a business plan that was one page long.  
23 Not only was the company mismanaged, but the bank statements  
24 that I will offer into evidence, the bank statements that I  
25 will put before you and put up on that screen and put on those

## Opening - Mr. Shargel

1 monitors will show that again and again, as fast as Mr. Levy  
2 was putting money into Cardiac, as fast as he could get money  
3 to that business, again and again and again it was being taken  
4 right out.

5 It was being taken right out with large checks, large  
6 checks, not only for a Porsche car for \$1700 a month, but the  
7 original partners in Cardiac were taking Mr. Levy's money and  
8 robbing him blind, diverting money that was intended to jump-  
9 start this company, to allow the company to grow and to  
10 distribute those heart monitors. That money was just being  
11 diverted, diverted.

12 The bank records show it. The bank records will show  
13 the money that went in and the money that came out, and who was  
14 getting that money completely, completely unrelated to the  
15 project at hand, the success of this heart monitor business.

16 Even Dr. Gang, if I may say, even Dr. Gang, who will  
17 be a witness here, was taking money out of the business. That  
18 wasn't what Mr. Levy struck a bargain for. That wasn't what  
19 Mr. Levy intended to have happen. He wanted to see the success  
20 of this company. His interest in earning money was directly  
21 base on the success of the company.

22 Again and again money was taken out of this company.  
23 But, you know, it didn't even stop there. Zev Helfer will  
24 testify -- it might be this afternoon -- Zev Helfer will  
25 testify that he was kicked out of the company. He was kicked

## Opening - Mr. Shargel

1 out of the company. You're going to see that he wasn't kicked  
2 out of the company. He was voted out of the company.

3 I keep wanting to go back to the words. This man who  
4 worked hard to create a company and was lied to by Mr. Levy and  
5 lied to by Donna Levy, this man had perpetrated an enormous  
6 fraud, an enormous fraud that essentially was killing the  
7 company. It was killing the company because it was diluting  
8 the shares and creating false financial information for other  
9 investors and purchasers of stock.

10 You might say, well, these are just lawyer's words. I  
11 say to you, ladies and gentlemen, hold me to it. Hold me to  
12 it. Focus on that one issue for a moment. And there will be  
13 so many of these issues throughout the case. Just focus on  
14 that one issue for a moment, that Zev Helfer, unbeknownst until  
15 he was discovered -- he wasn't discovered by Mr. Levy. He  
16 fooled Mr. Levy.

17 There was a new CEO that came into the company, a new  
18 CEO named Michael Swartzburg, a well credentialed CEO who  
19 discovered that there was an enormous fraud, an enormous fraud,  
20 not by Mr. Levy, not by David Levy or Donna Levy, but an  
21 enormous fraud created, engineered, and executed by Zev Helfer.  
22 Hold me to it.

23 Another thing about the claim that Mr. Levy was only  
24 in it to pump it and dump it and he didn't care what happened  
25 to the company. You're going to see again and again

## Opening - Mr. Shargel

1 circumstantial evidence, direct evidence -- the judge explained  
2 the difference between the two -- you're going to see exquisite  
3 evidence eloquently showing that again and again that David  
4 Levy was interested in the success, not the failure. He wasn't  
5 dumping on the company. Not the failure of the company.

6 What is the evidence of that? Let me give you a few  
7 examples. While Zev Helfer was figuring out what was going to  
8 happen with his Porsche and the cash he was putting in his  
9 pocket, withdrawing from the bank, do you know what David Levy  
10 was doing? He wasn't pumping and he wasn't dumping.

11 David Levy was working. He himself was working to get  
12 this company going, thinking that everyone was well-  
13 intentioned. He said, we need a promotional video, a  
14 promotional video, David Levy says, that will get the company,  
15 that will get the name out there, that will get the idea before  
16 the public.

17 He goes to people from the industry in which he  
18 worked, the film and music industry. He went to people in that  
19 industry and he said, can you help me with a promotional film,  
20 a video? And they said yes. After he got the estimate, after  
21 he got the estimate, there were two ways to go. One was that  
22 the film would cost \$4,000 -- I think this speaks volumes --  
23 one that the film would cost \$4,000 and another that would cost  
24 a little over \$6,000.

25 David Levy, who is only interested in himself, said to

## Opening - Mr. Shargel

1 Zev Helfer at that time when he thought that Zev Helfer was an  
2 honest man, he said to him, I'll pay for the video, I'll pay  
3 for the video, but let's do the \$6,000 one because I think it  
4 is a better video. I think these people who are very  
5 experienced out in California, we'll get a better product if we  
6 do the \$6,000 video, and I'll pay for it.

7 Then they wanted to have a logo for the business,  
8 Cardiac Network, to get some attractive logo. Zev Helfer,  
9 while he is riding around in his Porsche, it's David Levy who  
10 meets and says, I want to have a logo designed, that that was  
11 going to cost a fair amount of money. But he said to Zev  
12 Helfer, don't worry, I will pay for it and the company can pay  
13 me back after it's successful. Again and again, again and  
14 again David Levy showed without equivocation that he was a  
15 person who was interested in this business.

16 Well, after it was discovered by Michael Swartzburg  
17 that a fraud was committed -- by the way, it wasn't Zev  
18 Helfer's only fraud. More frauds come out when the government  
19 starts talking to him and more frauds come out as these papers  
20 are analyzed and what Zev Helfer was doing that was killing  
21 this business.

22 There was no pump and dump here. Michael Swartzburg  
23 comes on as the new CEO. I'll make this brief. Everyone has  
24 such high hopes, high hopes, now that Zev Helfer was out of the  
25 company. Swartzburg, a seasoned, experienced, well-

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1     credentialed CEO comes in and everyone expected that the  
2     company would be turned around, everyone including David Levy.

3             When Swartzburg comes in, you will hear him tell you  
4     this himself, he will be a witness in the case, he will tell  
5     you that after he came on board, David Levy, confident that  
6     Helfer was out, wrote a check for \$100,000. Another hundred  
7     thousand dollars goes into the business, another hundred  
8     thousand dollars. You know what? Mr. Levy still owns Cardiac  
9     Network stock. He wasn't looking to dump or ruin or steal or  
10    fool or deceive the company.

11            Let's go to one more example. I'll even make it  
12    shorter. Mr. Master said, well, there was a commonality of  
13    interest, yes, a commonality of events between and among the  
14    companies. Well, yes, there was. In that respect let me talk  
15    about Banneker. Again, David Levy targeted companies? I say  
16    no, he did not, the companies targeted David Levy and came to  
17    him to make presentations as an investor.

18            (Continued on next page)

19  
20  
21  
22  
23  
24  
25

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Opening - Mr. Shargel

1           MR. SHARGEL: Let me bring you back to April of 2007.  
2 David and Donna go to Smokey Robinson -- they remember the  
3 concert they went to -- Smokey Robinson concert down in Florida  
4 and they met a woman named Bree Foster. They met the woman and  
5 it was an afterparty at the concert and they met this woman  
6 Bree Foster. And it's like any other party that you go to --  
7 what do you do, what do you do? And David Levy says to her,  
8 I'm an investor. And they go on and they talk and they  
9 exchange phone numbers and everyone is getting along.

10           And about a month after the party, the Smokey Robinson  
11 concert, Bree Foster calls David Levy and said I'm involved in  
12 this company called Banneker and would you be interested? And  
13 he said come talk to me. Tell me about it. Come over to my  
14 house again. He said come over to the house.

15           There were two meetings at the house. The first  
16 meeting took place with Tim Hardaway, the basketball player.  
17 Tim Hardaway was one of the founding partners in Banneker. And  
18 Tim Hardaway comes over with Bree, Bree Foster, and they talk  
19 about Banneker and its business and they brought a laptop  
20 computer and they're going over the product.

21           After that first meeting, there was another meeting.  
22 Tim Hardaway came again to David Levy's house with Bree, and  
23 they brought also a man named Derrick Holmes. Mr. Holmes will  
24 be a witness here. Mr. Holmes was one of the founding, along  
25 with Tim Hardaway, was one of the founding partners in the



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Opening - Mr. Shargel

1 company. Holmes said he designed the jewelry for the Banneker  
2 brand, and he said they also had a contract with Jostens. I  
3 don't know if you've heard of that company. The class rings is  
4 what they specialize in. Everybody has a class ring probably  
5 from that company. And Holmes said that the idea that Banneker  
6 had is they were designing class rings specifically targeted at  
7 urban youth. And speaking of targeted, again, David Levy was  
8 targeted.

9 David Levy did his due diligence, as he did in every  
10 one of the cases. He was told by Holmes that Beyonce was  
11 involved in this company and was interested in this project.  
12 David knew Beyonce's father, Matthew Knowles, and David called  
13 Matthew Knowles and asked him whether his daughter was involved  
14 in the company. And Matthew Knowles said that he wasn't, but  
15 his daughter is involved in the company and it seemed like a  
16 darn good idea.

17 And you know what -- particularly for a startup  
18 company -- you know what, it was a darn good idea. If you  
19 think about it, to have Beyonce's name anywhere near the  
20 project, to have what seemed like a fabulous business venture,  
21 what could be wrong with that? What could possibly be wrong  
22 with that?

23 Well, there was something wrong with that. The  
24 something wrong with that is that Derrick Holmes -- and we'll  
25 show this again and again -- that Derrick Holmes essentially

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Opening - Mr. Shargel

1 destroyed the company. He destroyed the company. And David  
2 Levy was saying to him, after providing a large sum of money --  
3 and by the way, David Levy, Mr. Master said, well, you know,  
4 David Levy would promise money and then not deliver on the  
5 money that he promised. Well, I don't think you'll find that  
6 not delivering money to someone who's stealing the money from  
7 you is any kind of criminal violation, I respectfully submit.

8 But David Levy had money that was left with a lawyer  
9 that was earmarked to give that company additional money, but  
10 Derrick Holmes was taking money out of that company faster than  
11 David Levy could get it to the company. And this is what,  
12 again, worked hard, all these people, the companies that I'm  
13 talking about now. Look, these are Mr. Master's words and you  
14 can hold him to it -- worked hard to create a company and they  
15 were lied to and deceived and fooled by David Levy. No, they  
16 weren't. Personal expenses were essentially sucked out of  
17 Banneker.

18 And what, David Levy is a bad person because he didn't  
19 continue supplying the money when he found out and saw what  
20 Holmes was doing; that he had these side deals that were  
21 diluting the shares of the company; that he had private  
22 placements under a certain section of the SEC, the securities  
23 law, this unsophisticated person? And David Levy was supposed  
24 to say okay, sir, here's more money, here's more money.

25 Look, I think the picture is clear. I don't have to

1 labor it. We should get on to the evidence in this case. What  
2 the lawyers are saying is not evidence. It's just a prediction  
3 of what we believe the evidence will show. And I think that as  
4 I said before, you can hold me to it, because everything I said  
5 to you is something that will be proven before you. And the  
6 idea that they can prove this case against the Levys beyond a  
7 reasonable doubt is utter nonsense, I respectfully submit.

8 But I want to say one more thing before I sit down.  
9 That jury selection process, well, we all went through it  
10 together. But I want to share something with you. When we  
11 were up there at the side and going in the back door and  
12 exercising our challenges, we weren't looking for black jurors  
13 or white jurors, we weren't looking for Jewish jurors or  
14 Gentile jurors, we weren't looking for Protestant jurors or  
15 Catholic jurors, we weren't looking for tall jurors or short  
16 jurors. We were looking for fair jurors -- that's the only  
17 thing we were looking for -- fair jurors.

18 And you are that jury. You are the people who said  
19 emphatically again and again -- you didn't make any excuses to  
20 get off -- you said again and again you could be fair and I  
21 have confidence in that representation and David and Donna Levy  
22 have confidence in that representation.

23 And I suggest to you most respectfully at the end of  
24 this case, no matter how long or how short it takes, the  
25 verdict that you'll find from the evidence and the lack of

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Opening - Mr. Shargel

1 evidence and the inconsistency of the evidence and, no, I'm not  
2 going to drop my voice and say witnesses lie. Witnesses lie?  
3 Witnesses lie to the government again and again and they lied  
4 to David Levy as well. Thank you.

5 THE COURT: Mr. Srebnick.

6 MR. SREBNICK: May it please the Court, your Honor.

7 THE COURT: Yes, please.

8 MR. SREBNICK: Good afternoon, ladies and gentlemen.  
9 Mr. Shargel, as you can tell, is a hard act to follow. But I  
10 must follow him because I represent Donna Levy and it is my  
11 privilege to do so.

12 Donna Levy has been the loyal wife to David Levy for  
13 30 plus years. And despite her young looks, she's a  
14 grandmother. She has a daughter who's in her thirties who  
15 David, although is not the father, David raised their daughter  
16 Victoria. She's 39 years old. Donna's granddaughter Millie.  
17 And she has a stepsister, half-sister I should say, Natalie,  
18 who's 30, who Donna basically raised since she was so much  
19 older.

20 For the last 15 years after her daughter was grown,  
21 Donna Levy joined her husband David in his capacity as an  
22 investor, as you've heard from Mr. Shargel, and she started her  
23 own enterprise promoting, advertising, a company she called DML  
24 Marketing, her initials, Donna Michelle Levy Marketing. And  
25 she developed a business, a marketing business. Eventually

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1 developing a website. Her business is the business of  
2 marketing and advertising young companies that go public, young  
3 companies that go public who the big Wall Street firms do not  
4 follow, the big Wall Street firms do not analyze.

5 But make no mistake, she's in the advertising  
6 business. She is not a journalist. She's not an analyst. She  
7 doesn't hold herself out ever to be an investment adviser.  
8 She's not an accountant. She's not an auditor. She's not a  
9 lawyer. She's an advertiser. And, you know, in the  
10 advertising business, they say there's no such thing as bad  
11 press. And it was her job to create investor awareness, public  
12 awareness of startup companies.

13 Why do young companies want that? Because a young  
14 company where there's no investor awareness, where the public  
15 doesn't know about them, will have no chance of having their  
16 stocks ever traded if no one knows about them. And so it's  
17 Donna Levy's job through her company, DML Marketing, and  
18 eventually through a website called Wallstreetpremiere.com, to  
19 alert the public to young companies, some of which her husband  
20 may be investing in, and you'll hear and you heard about  
21 Cardiac and Banneker; and some companies in which her company  
22 does not have an investment, a company called Emerging World  
23 Pharma, EWPI, would be an example of a company which you'll  
24 hear about in this case.

25 So what a marketing company like Donna's does, it

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1 chronics the history of a young company. We all hear about  
2 companies, as Mr. Shargel talked about Facebook, Microsoft,  
3 Apple. Well, I assume that when Microsoft started in the  
4 garage of Mr. Gates and when Apple started in the garage of  
5 Mr. Jobs, nobody heard much about them. Of course, now the  
6 Wall Street Journal follows them every day. But young  
7 companies don't get that kind of media attention. And it's the  
8 job of marketing companies, when hired to do so, to create that  
9 investor awareness for a fee.

10 Let me take a little side track. You've heard a  
11 little bit, you're going to hear about two more weeks of it  
12 about Cardiac and Banneker and these companies, but perhaps we  
13 should define some of the terminology that will be important to  
14 this case which the witnesses hopefully will educate us about  
15 and I expect you'll hear about.

16 Most of us have heard of the New York Stock Exchange,  
17 the American Stock Exchange, and then we've heard perhaps of  
18 something called the pink sheets. Stock, which is nothing more  
19 than ownership of a company in a particular percentage, those  
20 stock if publicly traded may be available on the New York Stock  
21 Exchange or may be available on a bigger exchange. But in  
22 small young companies that don't qualify to be traded on the  
23 New York Stock Exchange, they'll be traded in a market known as  
24 the pink sheets because in the old days before -- as  
25 Mr. Shargel who will remember because of his age -- before the

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1 electronic age, it was traded on paper and the color of the  
2 paper happened to be pink so it developed the name pink sheets.

3 And so you hear the term penny stock, and a penny  
4 stock is nothing more than a stock that simply doesn't qualify  
5 for trading on one of the big exchanges because either the  
6 price of the share is too low or the market capitalization is  
7 too low. But there is no market in the same way for these  
8 penny stocks as you hear about for the New York Stock Exchange.  
9 And the market for these young companies, the stock you'll hear  
10 about, although publicly traded, there's no unified exchange.  
11 And so different companies become market makers and you'll hear  
12 more about that.

13 But the bottom line is, unless there's someone  
14 advertising the company to the media, there will be no investor  
15 awareness. You will never have heard about the company. You  
16 would never have heard about Cardiac Networks or Banneker or  
17 EWPI except for them hiring or someone hiring a marketing  
18 company to do that.

19 Now, what's important as we go along through the trial  
20 is to remember that anyone who decides to invest in a penny  
21 stock, any of us who decide to invest in a penny stock, first,  
22 of course, we can go on the internet and do as much research as  
23 we'd like. We live in the electronic age.

24 No. 2, we can learn from the SEC, the Securities and  
25 Exchange Commission, their website, they tell you penny stocks

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1 are a different breed. Why? They don't have any disclosure  
2 requirements regarding their financials; they don't post a  
3 balance sheet; they don't necessarily post an income statement.  
4 They don't have to register with the Securities and Exchange  
5 Commission. And so we all know from our own personal  
6 experience that penny stocks present a much higher risk, the  
7 kind of risk Mr. Shargel told you about when an investor like  
8 David Levy or Donna Levy buy into a young company, the risk  
9 that the stock will simply not be available to be sold because  
10 no one will have heard about it, no one will have access to  
11 information about the company.

12 And there's another term you'll hear about and it's a  
13 term that's known as liquidity and it simply means the  
14 availability, the volume, how much stock is traded. And you'll  
15 hear about that, I'm sure, from the government's own witnesses.  
16 There should be no debate about it. And one of the goals a  
17 young company has is to create liquidity in its stock. Why?  
18 If a shareholder ever wants to sell his shares, there needs to  
19 be liquidity, meaning enough buyers in the market, so that he  
20 can sell his shares.

21 After all, when we buy stock, we don't intend to hold  
22 the stock forever, do we? At some point in time we intend to  
23 sell. If you could never sell your stock, you'd never buy it  
24 for it would have no value if it couldn't be sold. These are  
25 basic principles.



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1           And so Donna Levy is in the business of creating  
2 investor awareness. How does she do that? How does she  
3 chronicle the history of a company?

4           What a company does is it generates press releases. A  
5 press release, whether it be in the stock industry or whether  
6 it be the White House that issues a press release when the  
7 President wants to send a statement about some new policy, is  
8 drafted, it's edited, it's prepared, it's studied by whoever is  
9 going to issue the release. President Obama, for example, when  
10 he issues a press release, he probably has a speech writer who  
11 drafts it up and with the President's authority it's released  
12 to the news media.

13           It's not much different in the business of advertising  
14 stock. Donna Levy would assist a company. In the case of  
15 Cardiac, she would contact the management, Zev Helfer, who you  
16 heard about, discuss with him, tell me what is the news that is  
17 worthy of reporting to the public. For example, Cardiac has  
18 just been listed, has a new product, signed a new deal. A  
19 press release is issued. Donna Levy doesn't create the  
20 information that goes into a press release. She drafts it with  
21 the supervision and approval of the management of a company.

22           And in this electronic age you will see that the  
23 simplest way to create a press release -- and it's the way  
24 Donna Levy did it -- is through email. Email the company, have  
25 them review the draft press release, get the approval, and then

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1 the press release is issued. It's exactly how she did it. And  
2 we will present to you a load of email traffic establishing  
3 that when Donna Levy worked on a press release, she worked  
4 closely with management, publicizing that information that  
5 management had approved.

6 The press release is disseminated. Now, who's going  
7 to care that a press release is disseminated without some sort  
8 of advertising campaign? So, Donna Levy's next job is to  
9 create an advertising campaign with the press release as the  
10 source of information. Similar to when the President issues a  
11 press release, the Wall Street Journal picks it up and all the  
12 commentary starts. You turn to the back of the Wall Street  
13 Journal, the New York Times, the New York Post, or, in my case,  
14 the Miami Herald, and I read what people have to say about that  
15 press release.

16 So what Donna Levy does through her company, DML  
17 Marketing, is to make sure that people are reading the press  
18 releases. It's a promotion campaign. It's an advertisement.  
19 Government Exhibit 101-10, I'm sure you'll see it in evidence.  
20 It's a promotion campaign.

21 Soon millions of American seniors will carry the  
22 telephonic part one wherever they go and Cardiac Network,  
23 symbol, CNWI, will be making millions for investors who buy  
24 their dollar stock now. With Cardiac Network's unique patient  
25 monitors which send lifesaving heart data over the telephone,

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1 in only seconds the doctor or a trained heart specialist can  
2 receive phone transmitted digital data that tells if the  
3 patient is having a heart attack. And this technology is  
4 available now.

5 It is encouraging people to research Cardiac Network  
6 and to consider on their own whether Cardiac Network suits them  
7 as a potential investment perhaps. But make no mistake, these  
8 promotional campaigns are very clear, Donna Levy is not a  
9 investment adviser. Donna Levy is not soliciting anything from  
10 anybody. And in order to comply with the law, not to break the  
11 law but to comply with the law, the promotions contain  
12 language, legal notices, what some people call disclaimers,  
13 that let the public know exactly who is Donna Levy and why is  
14 she promoting this stock.

15 And the disclaimer will read in part -- you'll see it  
16 during the trial -- this publicly distributed email report is a  
17 sponsored advertisement, does not purport to provide an  
18 analysis of any company's financial position, and is not in any  
19 way to be construed as an offer or solicitation to buy or sell  
20 any security.

21 She is a paid advertiser. The distribution costs of  
22 this report were funded by DML Marketing in an effort to create  
23 investor awareness of Cardiac Network Inc. She tells the  
24 reader, I am paid to create investor awareness. DML is not a  
25 licensed broker, not a broker dealer, not a market maker, not

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1 an investment banker, not an investment adviser -- and here's  
2 the key language -- but could be deemed an affiliate of the  
3 featured company insofar as friends, family members, and  
4 affiliates own approximately 20 percent of the company.

5 She tells the reader, she tells the public, family own  
6 20 percent of the stock. She doesn't hide it. She doesn't  
7 conceal it. She fully discloses that she's a paid advertiser  
8 because her family has 20 percent of the stock. So the reader  
9 knows she's not disinterested, she has a conflict of interest,  
10 but it's disclosed. A conflict of interest meaning she's  
11 promoting the stock that she owns and, therefore, people who  
12 buy it know that her family could benefit.

13 And she goes further: Affiliates do own shares and  
14 may buy and sell additional shares of the company for less than  
15 the expected price given in this material. And so not to break  
16 the law but to comply with the law, Donna Levy tells the public  
17 my family may own stock, 20 percent, may sell the stock, may  
18 sell it at less than what some projections may be for this  
19 stock, meaning, may not hold it forever, may not wait for the  
20 stock to go higher.

21 And then Donna Levy through her disclosures tells the  
22 potential reader: Each investor must make the decision based  
23 on his or her own judgment of the market.

24 And it goes further: This report is for informational  
25 and advertising purposes only, should not be construed as

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1 investment advice. Furthermore, the information used to  
2 prepare this report is believed to be from reliable sources,  
3 but no representation is made as to the accuracy or  
4 completeness of such information. Investment in securities  
5 carries a high degree of risk. It involves risks and  
6 uncertainties which may result in an investor losing all of  
7 their invested capital.

8 The disclosure could not be clearer at just how risky  
9 an investment in a young company can be.

10 And then citing the Security and Exchange Act of 1933  
11 and the Security and Exchange Act of 1934, laws that have been  
12 on the books for 80 years or plus, the information contained  
13 herein contains forward looking statements within the meaning  
14 of Section 27A of the Securities Act of 1933 and Section 21E of  
15 the Securities and Exchange Act of 1934. Forward looking  
16 statements are based upon expectations, estimates, and  
17 projections at the time the statements are made and involve  
18 risks and uncertainties that could cause actual events to  
19 differ materially from those anticipated. Readers should  
20 consult their own professional investment, tax, and portfolio  
21 advisers before making any investment decision and should  
22 independently verify all information herein.

23 And for further information, it directs the reader to  
24 the website of the company. In this case, it was Cardiac. And  
25 so despite all of the advertising, all of the optimism in an

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1 advertising, it is very clear to the reader that she is  
2 promoting a stock that her family owned and might well sell at  
3 any time.

4 The same can be said about the advertising campaign of  
5 Banneker, in the Banneker case where the Levys have stock in  
6 that company. When Donna worked on one of the promotions, it  
7 had much of the same language you heard me read regarding  
8 Cardiac about paid advertiser, etc. And then it went on to say  
9 that an affiliate has 1 million Rule 144 restricted shares of  
10 Banneker. Licensors, affiliates, officers, directors, and  
11 employees may own shares and may buy and sell additional shares  
12 of the company mentioned for less than the expected price.

13 And so these advertising campaigns are much like  
14 perhaps an infomercial that we see on television, perhaps it's  
15 like an advertisement in the classified section when someone is  
16 selling their car. These are advertisements and they encourage  
17 you -- don't have to get into all the language -- before you  
18 make an investment decision, you got to do more research.

19 One of the campaign, advertising campaign specifically  
20 says do your research. Why? Because none of the fundamentals  
21 of the company are published. No balance sheets, no income  
22 statements. It's a high risk for one to invest in a company  
23 like this.

24 It's an advertising campaign like you see on  
25 television for prescription medication, whether it be Lipitor,

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Opening - Mr. Srebnick

1 Crestor, Viagra, whatever it is. It says here's the great news  
2 about this product, and then they go on for two minutes about  
3 how you can -- it can cause cancer, you could have a heart  
4 attack, you could end up not being able to sleep at night,  
5 diarrhea, nausea. And then it says consult your doctor before  
6 making a decision. Of course, with prescription medication,  
7 you need to see a doctor first because you can't go to the  
8 drugstore and buy it. So you ask yourself, why are the  
9 prescription drug companies even advertising at all to us since  
10 we can't go out and buy Lipitor? Investor awareness, product  
11 awareness. But check with your doctor first. Check with your  
12 investment adviser first, and that's exactly what Donna did,  
13 not to break the law, but to comply with the law.

14 And so she built a business for herself, a business  
15 which relied on the law to protect her from people like the Zev  
16 Helfers who after the fact, when they are revealed for who they  
17 are, unfortunately, she has the protection of the law, we hope,  
18 because she complied with the law.

19 And of course there are going to be people who are  
20 disappointed in a stock investment. Of course for every winner  
21 in a stock there's a loser in many people's mind. It's called  
22 a zero sum gain in some economist's mind. When I sell, someone  
23 buys. I assume the person who buys thinks the stock is going  
24 to be worth more. The person who sells may think it won't be  
25 or maybe needs the money. There are many different reasons why

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1 people buy and why people sell.

2 But it was simply Donna's job and she did it well and  
3 she commanded handsome fees for doing that. In some instances,  
4 she could earn over a hundred thousand dollars for doing a  
5 successful marketing campaign of a stock. And that's  
6 inexpensive compared to what it would cost a company to hire an  
7 entire investor relations department and try to do it on their  
8 own. And so what Donna did was like most of us do, she did her  
9 job.

10 Now, Donna wasn't involved in day-to-day investment  
11 decisions. David Levy for the family, he had the savvy, he had  
12 the background, he had the experience. And, of course, she's a  
13 loyal wife and she relied on him because she understood he knew  
14 the business. But she developed her own little enterprise and  
15 she did her enterprise well. She may not have the same  
16 background as Wall Street people, she may not have gotten an  
17 MBA, she may not have gotten a degree in advertising; but she  
18 did a really good job of developing a database and developing a  
19 website to create the investor awareness.

20 And so I submit to you that Donna Levy, rather than  
21 breaking the law, she endeavored to comply with the law. And  
22 the evidence will show in every instance she communicated with  
23 the people she was working with, she communicated with  
24 management, she communicated with the folks at Cardiac to learn  
25 more to draft up these releases. She hired other people to



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1 work with her, draftsmen who could help draft these promotions.  
2 She collected the photographs of Beyonce with Mr. Holmes, of  
3 Hardaway with Mr. Holmes. Donna is not involved in the  
4 day-to-day. But in the electronic age, she was able to  
5 exchange the information to do her job and to do it well.

6 And so I submit to you that what the evidence will  
7 show is that Donna did her job and that's all she did. She did  
8 it well. It paid well. And, as Mr. Shargel said, there's no  
9 shame in being successful and she was successful at that. And  
10 so I ask you to pay close attention, and I know it's going to  
11 be laborious and you're probably at this point the details,  
12 well, they may be boring, but they're really important to  
13 Donna. These details are really important to Donna because she  
14 is being charged criminally.

15 This is a criminal courtroom, we all understand.  
16 We're not talking about a civil dispute here between the  
17 Cardiac people and Donna, between the Banneker people and  
18 Donna. This is a criminal courtroom and there are criminal  
19 consequences and she's being accused of committing a crime.  
20 And I may be boring because the details may be boring, but the  
21 law is in the details. The law is in the details.

22 So I'm going to ask you, as difficult as it will be,  
23 let's try to pay attention to those details because those  
24 details will show you that Donna Levy complied with the law.  
25 She didn't break the law.

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1           Okay? Thank you. Thank you, ladies and gentlemen.

2           THE COURT: Ladies and gentlemen, we'll take our  
3 afternoon break. As soon as we come back, we'll start. We'll  
4 swear in a witness and start hearing the testimony and the  
5 evidence which will control your decision.

6           THE DEPUTY CLERK: Ten-minute break, your Honor?

7           THE COURT: Ten-minute break.

8           Marlon, would you advise the jurors they can leave  
9 their coats in the jury room.

10          THE DEPUTY CLERK: Yes, your Honor.

11          THE COURT: See you in ten minutes.

12          (Recess)

13          (Jury not present)

14          THE COURT: Call in the jury, please.

15          THE DEPUTY CLERK: We're waiting for the deputy  
16 marshal to come upstairs.

17          MS. COHEN: Your Honor, we have a question. Can we  
18 raise it now?

19          THE COURT: What is it?

20          MS. COHEN: Your Honor, we have different stipulations  
21 in this case and we've spoken with defense counsel. I don't  
22 know if your Honor requires us to read the entire stipulation  
23 into evidence or we should just admit the stipulation and then  
24 it will be in evidence for people to read.

25          THE COURT: You can do it either way you want. I

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1 think it's more effective if the jury hears it, but that's up  
2 to you.

3 MR. MASTER: Thank you, your Honor.

4 MS. COHEN: Thank you, your Honor.

5 THE COURT: In my experience, I've never seen anybody  
6 not read the stipulation. But if you don't want to read it and  
7 have it admitted into evidence, okay. I don't know what the  
8 jury makes of it. But maybe you can read it to them later.

9 MS. COHEN: Okay.

10 (Continued on next page)

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1 (Jury present)

2 THE COURT: You can sit down.

3 The government will call its first witness.

4 MR. MASTER: Yes, your Honor. At this time the  
5 government calls Peter Melley.

6 PETER J. MELLEY,

7 called as a witness by the Government,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 MR. MASTER: Thank you.

11 BY MR. MASTER:

12 Q. Mr. Melley, where do you work?

13 A. I'm the director of FINRA's criminal prosecution assistance  
14 group in Washington, D.C.

15 Q. And what does FINRA stand for?

16 A. FINRA is a financial industry regulatory authority. It is  
17 a private self-regulatory organization of the securities  
18 industry. It's charged with regulating trading on various  
19 securities markets, as well as governing the behavior of its  
20 members who are brokerage firms and registered individuals who  
21 work at those firms.

22 Q. And for how long you have been with FINRA?

23 A. Approximately 17 years.

24 Q. And what are your duties and responsibilities as the  
25 director of FINRA's criminal prosecution assistance group?

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1 A. I oversee a small staff of four attorneys that work on --  
2 only work on providing assistance in criminal investigations  
3 and prosecutions involving securities fraud. It is a unit that  
4 is separate from the regulatory operations of FINRA.

5 Q. Now, what if any entity supervises FINRA?

6 A. FINRA falls under the jurisdiction of the U.S. Securities  
7 and Exchange Commission.

8 Q. And what's the U.S. Securities and Exchange Commission?

9 A. It is the federal agency that has civil jurisdiction over  
10 the securities industry. It's charged with enforcing the  
11 federal securities laws and regulating activities on the  
12 various markets.

13 Q. And in which stock markets does FINRA exercise its  
14 regulatory authority?

15 A. FINRA regulates trading on a variety of markets including  
16 what's commonly called NYSE, the New York Stock Exchange, also  
17 the NASDAQ stock market, as well as over-the-counter securities  
18 markets.

19 Q. And are there different types of over-the-counter  
20 securities markets?

21 A. Yes, there are.

22 Q. What are they?

23 A. The two primary markets that fall within that larger area  
24 are what's called the over-the-counter bulletin board, which is  
25 a trading service, trading platform, which involves companies

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1 that are smaller than what you would find on the NASDAQ or the  
2 NYSE. They're companies that trade for smaller dollars per  
3 share and are not as visible to the general public. Those  
4 companies do have certain requirements to file their financial  
5 information with the SEC.

6 And below that rung on the ladder would be what's  
7 commonly called the Pink Sheet trading arena, which is where  
8 you have companies that trade for even lower share prices for a  
9 number of them. They do not attract the same number of buyers  
10 and sellers of stock that you're going to find on those listed  
11 exchanges like NASDAQ or the NYSE. And companies that trade in  
12 that Pink Sheet arena also do not have any requirements to file  
13 financial information with the SEC.

14 Q. And where are each of those markets that FINRA regulates  
15 located?

16 A. Right here in Manhattan.

17 Q. And in which of those stock markets that you just described  
18 does FINRA actually monitor trading activities?

19 A. All of those ones that I just listed.

20 Q. And what if anything does FINRA do to actually monitor  
21 trading activities on those markets?

22 A. FINRA monitors the daily trading, looking at both price and  
23 volume in the securities, as well as publicly disseminated  
24 information related to those companies.

25 Q. And what types of publicly disseminated information

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1 concerning those companies are you referring to?

2 A. It could include press releases that are issued by the  
3 companies themselves, as well as various promotional materials  
4 that may be put out whether it was through newsletters or  
5 emails or message boards, various internet type promotions.

6 Q. And in connection with the government's investigation of  
7 this case, did there come a time when you were asked to prepare  
8 certain summary charts concerning the companies Cardiac  
9 Networks, Banneker, Greenway Design Group, and Emerging World  
10 Pharma?

11 A. Yes.

12 Q. What sources of information were you asked to summarize and  
13 incorporate into those summary charts?

14 A. I reviewed information that derived from three main  
15 sources. One comes from Bloomberg Finance. Bloomberg is a  
16 financial software, news, and data service. It's considered  
17 the industry standard for getting information related to the  
18 trading in public companies in various markets.

19 I also gathered information, I reviewed information  
20 that came from FINRA itself. Those would be press releases and  
21 other promotional materials.

22 And, finally, I also reviewed and analyzed actual  
23 trading information that was listed on various brokerage firm  
24 account statements and trading spreadsheets.

25 Q. Let's take each of those sources of information that you

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1 summarized in turn.

2 First, focusing on the trading data concerning those  
3 four companies, in which markets did each of these company's  
4 stocks trade during the time period that you looked at?

5 A. Those four stocks traded on the Pink Sheet, in the Pink  
6 Sheet arena during those times. So they were four securities  
7 that traded in the over-the-counter securities market.

8 Q. And, sir, what is a penny stock?

9 A. Penny stock is a term used to refer to over-the-counter  
10 securities that trade for less than \$5 a share that also do not  
11 have as many investors or buyers or sellers in the securities  
12 as you may find on something on a listed exchange like Apple or  
13 IBM or something of that nature.

14 Q. And did all four companies that you were looking at trade  
15 below \$5 a share during this relevant time period?

16 A. Yes, they did.

17 Q. Now, concerning the trading data that you gathered, how is  
18 the data itself that you summarized generated?

19 A. It's generated by -- I have access to a Bloomberg terminal,  
20 which is basically just a computer, part of a service that  
21 Bloomberg provides where you could just input the name of the  
22 company you're looking for, a time period, and you can generate  
23 what's called the closing price and daily share volume  
24 information for that period of time.

25 Q. And what is the source of the information that Bloomberg



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1 maintains concerning the trading data that you gathered?

2 A. It is the actual transactions that brokerage firms are  
3 required to report to FINRA, per FINRA rules.

4 Q. And what does FINRA do with that information about actual  
5 trades?

6 A. FINRA is able to sell that information, that trading data,  
7 to various financial services, Bloomberg being one of them.

8 Q. And what's the reason that you downloaded this from  
9 Bloomberg as opposed to from FINRA's own data?

10 A. Bloomberg is considered the industry standard because of  
11 the wide range of services that they provide in gathering  
12 various types of information on publicly traded companies.

13 Q. Now, what types of data, again, did you actually download  
14 from this Bloomberg service concerning the trades in these four  
15 companies' stock?

16 A. The two types for each stock for a select period of time  
17 would be the closing price, which is considered the last sale  
18 of the regular trading day, which ends at 4 p.m. on the trading  
19 day.

20 And the second piece of data would be what's  
21 considered the daily market volume or market share volume,  
22 which the volume basically is just the shares that are  
23 exchanged among buyers and sellers over the course of the  
24 trading day.

25 Q. And what do you mean by when you refer to the term shares?

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1 A. Shares are a unit of ownership in a corporation whether  
2 it's a private corporation or, in these four instances,  
3 publicly traded companies.

4 MR. MASTER: Your Honor, at this time the government  
5 would like to read a stipulation admitting numerous categories  
6 of financial records in this case --

7 THE COURT: Go ahead.

8 MR. MASTER: -- including Bloomberg records.

9 And it's a stipulation between the parties. It's  
10 marked as Government Exhibit S-2. And with permission of the  
11 Court, it states:

12 It's hereby stipulated and agreed by and between the  
13 United States of America by Preet Bharara, United States  
14 Attorney, Carrie Cohen -- and Carrie Cohen, United States  
15 attorneys, of counsel, and Donna Levy and David Levy, the  
16 defendants, by their counsel, Howard Srebnick, Scott Srebnick,  
17 and Alex Arteaga-Gomez, Esquires, for Donna Levy, and Gerald L.  
18 Shargel and Ross Kramer, Esquires, for David Levy, that:

19 1. If called as a witness, a records custodian from  
20 Bank of America would testify as follows: Government  
21 Exhibits 1206 through 1212 are retrieved from the computer  
22 archive system of Bank of America. The records reflected on  
23 Government Exhibits 1206 through 1212 were created by a person  
24 with knowledge of, or created from information transmitted by a  
25 person with knowledge of, the information shown; were created

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1 at or near the time the information became available to Bank of  
2 America; and were created and maintained by Bank of America as  
3 part of its regularly conducted business activity.

4 2. If called as a witness, a records custodian from  
5 JP Morgan Chase would testify as follows: Government  
6 Exhibit 1201 was retrieved from the computer archive system of  
7 JP Morgan Chase. The records reflected on Government Exhibit  
8 1201 were created by a person with knowledge of, or created  
9 from information transmitted by a person with knowledge, of  
10 information shown; were created at or near the time the  
11 information became available to JP Morgan Chase; and were  
12 created and maintained by JP Morgan Chase as part of its  
13 regularly conducted business activity.

14 3. If called as a witness, a records custodian from  
15 BNY Mellon would testify as follows: Government Exhibit 1202  
16 was retrieved from the computer archive system of BNY Mellon.  
17 The records reflected on Government Exhibit 1202 were created  
18 by a person with knowledge of, or created from information  
19 transmitted by a person with knowledge of, the information  
20 shown; they were created at or near the time the information  
21 became available to BNY Mellon; and they were created and  
22 maintained as part of its regularly conducted business  
23 activity.

24 If called as a witness -- No. 4, fourth category -- a  
25 records custodian for BankUnited would testify as follows:

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1 Government Exhibits 1218 through 1220 were retrieved from the  
2 computer archive system of BankUnited. The records reflected  
3 on Government Exhibits 1218 through 1220 were created by a  
4 person with knowledge of, or created from information  
5 transmitted by a person with knowledge of, the information  
6 shown; created at or another the time the information became  
7 available to BankUnited; and were created and maintained by  
8 BankUnited as part of its regularly conducted business  
9 activity.

10 If called as a witness, a records custodian from Wells  
11 Fargo would testify as follows -- this is the fifth category of  
12 information -- Government Exhibit 1221 through 1223, 1229,  
13 1230, and 1239 through 1247 were retrieved from the computer  
14 archive systems of Wells Fargo. The records reflected on  
15 Government Exhibits 1221 through 1223, 1229, 1230, and 1239  
16 through 1247 were created by a person with knowledge of, or  
17 created from information transmitted by a person with knowledge  
18 of, the information shown; they were created at or near the  
19 time the information became known by Wells Fargo; and they were  
20 created and maintained by Wells Fargo as part of its regularly  
21 conducted business activity.

22 Sixth category. If called as a witness, a records  
23 custodian from Colonial Bank would testify that Government  
24 Exhibits 1248 through 1251 were retrieved from the computer  
25 archive system of Colonial Bank. The records reflected on

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1 Government Exhibits 1248 through 1251 were created by person  
2 with knowledge of, or from information transmitted by a person  
3 with knowledge of, the information shown; created at or near  
4 the time that information became available to the Colonial  
5 Bank; and were created and maintained by Colonial Bank as part  
6 of its regularly conducted business activity.

7 If called as a witness, a records custodian from  
8 Standard Bank would testify as follows: Government  
9 Exhibit 1228 was retrieved from the computer archive system of  
10 Standard Bank. The records reflected on Government  
11 Exhibit 1228 were created by a person with knowledge of, or  
12 created from information transmitted by a person with knowledge  
13 of, the information shown; they were created at or near the  
14 time the information became available to Standard Bank; and  
15 they were created and maintained by Standard Bank as part of  
16 its regularly conducted business activity.

17 Eighth category. If called as a witness, a records  
18 custodian from Citibank would testify that Government  
19 Exhibits 1233 through 1238 were retrieved from the computer  
20 archive system of Citibank. The records reflected on  
21 Government Exhibits 1233 through 1238 were created by a person  
22 with knowledge of, or created from information transmitted by a  
23 person with knowledge of, the information shown; created at or  
24 near the time the information became available to Citibank; and  
25 created and maintained by Citibank as part of its regularly

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1 conducted business activity.

2 Ninth category. If called as a witness, a records  
3 custodian from American Express would testify as follows:  
4 Government Exhibits 1203 through 1205 were retrieved from  
5 computer archive systems of American Express. The records  
6 reflected on Government Exhibits 1203 through 1205 were created  
7 by a person with knowledge of, or created from information  
8 transmitted by a person with knowledge of, the information  
9 shown; created at or another the time the information became  
10 available to American Express; and created and maintained by  
11 American Express as part of its regularly conducted business  
12 activity.

13 Tenth category. If called as a witness, a records  
14 custodian from Legend Securities would testify as follows:  
15 Government Exhibit 1200-1 through 1200-32, 1200-36 through  
16 1200-40, and 1200-42 through 1200-44, were retrieved from the  
17 computer archive system of Legend Securities. The records  
18 reflected on Government Exhibits 1200-1 through 1200-32,  
19 1200-36 through 1200-40, and 1200-42 through 1200-44, were  
20 created by a person with knowledge of, or created from  
21 information transmitted by a person with knowledge of, the  
22 information shown; were created at or near the time the  
23 information became available to Legend Securities; and were  
24 created and maintained by Legend Securities as part of its  
25 regularly conducted business activity.

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1           Eleventh category. If called as a witness, a records  
2           custodian from Penson Financial Services would testify as  
3           follows: Government Exhibits 1252 through 1258 were retrieved  
4           from the computer archive system of Penson Financial Services.  
5           The records reflected on Government Exhibits 1252 through 1258  
6           were created by a person with knowledge of, or from information  
7           transmitted by a person with knowledge of, the information  
8           shown; created at or near the time the information became  
9           available to Penson; and were created and maintained by Penson  
10          as part of its regularly conducted business activity.

11          Twelfth category. If called as a witness, a records  
12          custodian from BMA Securities would testify as follows:  
13          Government Exhibits 1213 through 1216 were retrieved from the  
14          computer archive system of BMA Securities. The records  
15          reflected on Government Exhibits 1213 through 1216 were created  
16          by a person with knowledge of, or created from information  
17          transmitted by a person with knowledge of, the information  
18          shown; were created at or near the time the information became  
19          available to BMA Securities; and were created and maintained by  
20          BMA Securities as part of its regularly conducted business  
21          activity.

22          Thirteenth category. If called as a witness, a  
23          records custodian from E\*Trade would testify as follows:  
24          Government Exhibits 1224 through 1227 were retrieved from the  
25          computer archive system of E\*Trade. The records reflected on

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1 Government Exhibits 1224 through 1227 were created by a person  
2 with knowledge of, or created from information transmitted by a  
3 person with knowledge of, the information shown; were created  
4 at or near the time the information became available to  
5 E\*Trade; and were created and maintained by E\*Trade as part of  
6 its regularly conducted business activity.

7 Fourteenth category. If called as a witness, a  
8 records custodian from Fagenson would testify as follows:  
9 Government Exhibit 1231 and 1232 were retrieved from the  
10 computer archive system of Fagenson. The records reflected on  
11 Government Exhibits 1231 and 1232 were created by a person with  
12 knowledge of, or created from information transmitted by a  
13 person with knowledge of, the information shown; were created  
14 at or near the time the information became available to  
15 Fagenson; and were created and maintained by Fagenson as part  
16 of its regularly conducted business activity.

17 Fifteen category. If called as a witness, a records  
18 custodian from Goldman Sachs would testify as follows:  
19 Government Exhibit 1217 was retrieved from the computer archive  
20 system of Goldman Sachs. The records reflected on Government  
21 Exhibit 1217 were created by a person with knowledge of, or  
22 created from information transmitted by a person with knowledge  
23 of, the information shown; created at or near the time the  
24 information became available to Goldman Sachs; and created and  
25 maintained by Goldman Sachs as part of its regularly conducted



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1 business activity.

2 Next to last, 16. If called as a witness, a records  
3 custodian from Capital Bank would testify as follows:  
4 Government Exhibits 502-1 through 502-3 were retrieved from the  
5 computer archive system of Capital Bank. The records reflected  
6 on Government Exhibits 502-1 through 502-3 were created by a  
7 person with knowledge of, or created from information  
8 transmitted by a person with knowledge of, the information  
9 shown; created at or near the time the information became  
10 available to Capital Bank; and were created and maintained by  
11 Capital Bank as part of its regularly conducted business  
12 activity.

13 Seventeenth and final category. If called as a  
14 witness, a records custodian from Bloomberg LP would testify as  
15 follows: Government Exhibits 101-29, 103-45, 104-28, and  
16 105-52 were retrieved from the computer archive system of  
17 Bloomberg LP. The records reflected on Government  
18 Exhibits 101-29, 103-45, 104-28, and 105-52 were created by a  
19 person with knowledge of, or created from information  
20 transmitted by a person with knowledge of, the information  
21 shown; created at or near the time the information became  
22 available to Bloomberg LP; and were created and maintained by  
23 Bloomberg LP as part of its regularly conducted business  
24 activity.

25 And, finally, it's further stipulated and agreed

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1 between the parties that the following Government Exhibits  
2 101-29, 103-45, 104-28, and 105-52, 502-1 through 502-3, 1200-1  
3 through 1200-32, 1200-36 through 1200-40, 1200-42 through  
4 1200-44, and 1201 through 1258 may be received in evidence at  
5 trial and that this stipulation may be received in evidence at  
6 trial.

7 Just one moment.

8 It's now signed by the parties. And so, therefore,  
9 the government offers the exhibits that are listed in this  
10 stipulation.

11 THE COURT: S-2 and the exhibits referred to from the  
12 17 institutions listed are received in evidence.

13 (Government's Exhibits S-2, 101-29, 103-45, 104-28,  
14 and 105-52, 502-1 through 502-3, 1200-1 through 1200-32,  
15 1200-36 through 1200-40, 1200-42 through 1200-44, and 1201  
16 through 1258 received in evidence)

17 MR. MASTER: Thank you, your Honor. Thank you for  
18 your patience.

19 BY MR. MASTER:

20 Q. We're now going to turn to the 17th category of evidence  
21 that was listed in the stipulation, those Bloomberg records.

22 I'd like you to look at Government Exhibit 101-29,  
23 103-45, 104-28, and 105-52. Do you see those items before you?

24 A. I do.

25 Q. And so they're already in evidence. If you wouldn't mind

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1 just taking a look at Government Exhibit 101-29, do you see  
2 that in front of you?

3 A. Yes.

4 MR. MASTER: Your Honor, may I have permission to  
5 publish the first page?

6 THE COURT: Yes, publish it.

7 Q. So this is the first page of Government Exhibit 101-29. If  
8 you could just explain for the jury what the source is of this  
9 information and how you obtained it and what's depicted on that  
10 document?

11 A. This is information that I generated from Bloomberg, and  
12 the information was just exported from Bloomberg into a Excel  
13 spreadsheet, which is what I created here. All the information  
14 that I asked for was for a date range of January 1, 2007  
15 through December 31, 2010, all closing price and trading volume  
16 in Cardiac Networks, which also had the ticker symbol CNWI.  
17 Each publicly traded company has a three or four character  
18 ticker symbol that relates to the actual full name of the  
19 company.

20 And as you can see here, the way the data is generated  
21 it provides for each trading day. What's listed in the price  
22 column is really the closing price. Again, it's that last sale  
23 of the regular trading day. And for that corresponding date,  
24 what the total volume was over the course of the day, the share  
25 volume, again, the number of shares that are exchanged among

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1 all the buyers and sellers, in this case, Cardiac Network on  
2 each day.

3 MR. MASTER: You can take that off the screen.

4 Q. Let's turn to the second category of information that you  
5 used in preparing your summary charts. That's the FINRA  
6 gathered data.

7 What specific FINRA data or FINRA gathered information  
8 were you asked to look at when you were preparing your summary  
9 charts?

10 A. Press releases as well as other promotional materials.

11 Q. And is that information that FINRA gathers over the course  
12 of its regularly conducted business activities?

13 A. It is.

14 Q. And I'd like you to take a look at a number of documents  
15 that are behind you, and if you could just quickly flip through  
16 them. They're marked as Government Exhibits 101-1 through  
17 101-28, 102-1 through 102-31, 103-1 through 103-44, 104-1  
18 through 104-27, and 105-1 through 105-51.

19 (Pause)

20 A. Okay.

21 (Continued on next page)

D36rlev4

Melley - direct

1 Q. Do you recognize the documents that are in those big  
2 folders?

3 A. Yes. These are the FINRA materials, the press releases and  
4 various other types of promotional materials related to the  
5 four companies.

6 Q. How do you recognize them?

7 A. They are materials that I had previously reviewed.

8 Q. Are these records of press releases and promotional  
9 materials that are gathered by FINRA created at or near the  
10 time the information became available to FINRA?

11 A. Yes.

12 Q. Were they created by a person at FINRA with knowledge of or  
13 created from information transmitted by a person with knowledge  
14 of that information shown on those records that you examined?

15 A. Yes, they were.

16 MR. MASTER: Your Honor, at this time the government  
17 offers Government Exhibits 101-1 to 101-28, 102-1 to 102-31,  
18 103-1 to 103-44, 104-1 to 104-27, and 105-1 to 105-51.

19 THE COURT: Any objection?

20 MR. SHARGEL: No objection.

21 THE COURT: The documents are received in evidence.

22 **(Government's Exhibits 101-1 to 101-28, 102-1 to**  
23 **102-31, 103-1 to 103-44, 104-1 to 104-27, and 105-1 to 105-51**  
24 **received in evidence)**

25 Q. What information were you actually asked to summarize from

D36rlev4

Melley - direct

1 those prereleases and promotional materials?

2 A. I was asked only to look at the dates of the promotional  
3 materials as well as the press releases, the dates they were  
4 issued and collected by FINRA.

5 Q. What would you do with the material that was gathered by  
6 FINRA and didn't have a date associated with it?

7 A. I would not include it on a subsequent chart that I  
8 created.

9 Q. What, if any, independent research did you do to look to  
10 locate press releases or promotional materials other than those  
11 already gathered by FINRA over the course of its regularly  
12 conducted business activities?

13 A. Beyond what was provided to me in the FINRA materials, I  
14 did not do any additional research.

15 Q. Now let's turn to that third and final category of  
16 information you were asked to summarize, those brokerage  
17 accounts. For which entities were you asked to summarize  
18 trading data or stock purchases and sales concerning those four  
19 companies?

20 A. I was asked to review trading accounts pertaining to a  
21 number of different entities: Bedrock Ventures, Petrobond,  
22 Date Palm Capital, EZ English, as well as EMC Holdings. For a  
23 couple of those names, there were also multiple accounts.

24 Q. How about accounts in the name of an entity called DML  
25 Marketing?

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Melley - direct

1 A. Yes, DML Marketing as well. I'm sorry.

2 Q. What did you do with that information?

3 A. I reviewed the trading activity in those accounts, focusing  
4 on trades pertaining to Cardiac Network, Banneker, Emerging  
5 World Pharma, and Greenway Design and looked to incorporate  
6 some of that data into my summary charts.

7 Q. Speaking of summary charts, I would like you to take a look  
8 at what is in front of you and marked Government Exhibits 110-1  
9 to 110-7, 111-1 to 111-10, 112-1 to 112-4, and 113-1 to 113-7.

10 Please take a moment.

11 A. OK.

12 Q. Do you see those items?

13 A. Yes.

14 Q. Do you recognize them?

15 A. I do.

16 Q. What are they?

17 A. They contain both charts that I created and other, for  
18 instance, account statements that I had reviewed.

19 Q. With respect to those that are marked as those government  
20 exhibits that I mentioned, what are those? 110-1 to 110-7,  
21 111-1 to 111-10, 112-1 to 112-4, and 113-1 to 113-7.

22 A. They relate to charts that I created.

23 MR. MASTER: Your Honor, at this time the government  
24 offers those exhibits 110-1 to 110-7, 111-1 to 111-10, 112-1 to  
25 112-4, and 113-1 to 113-7.

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Melley - direct

1 MR. SHARGEL: No objection.

2 MR. SREBNICK: May we have a moment?

3 No objection, Judge.

4 THE COURT: They are received in evidence.

5 (Government's Exhibits 110-1 to 110-7, 111-1 to  
6 111-10, 112-1 to 112-4, and 113-1 to 113-7 received in  
7 evidence)

8 MR. MASTER: If you would publish Government Exhibit  
9 111-1. We are going to go a little bit out of order.

10 THE COURT: 111-1?

11 MR. MASTER: 111-1.

12 THE COURT: OK.

13 BY MR. MASTER:

14 Q. Sir, what is the source of the information that's on this  
15 summary chart that you created?

16 A. This concerns Cardiac Network pricing volume information  
17 that was gathered from Bloomberg, Government Exhibit 101-29.

18 Q. When you created these summary charts, what did you do to  
19 indicate the sources of the data that are in the summary  
20 charts?

21 A. It's indicated in a footer at the bottom of the chart.

22 Q. What did you do to create this chart?

23 A. I took from Government Exhibit 101-29 the closing price and  
24 daily market share volume and incorporated it into this chart  
25 showing the closing prices over the course of January '07 to



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Melley - direct

1 December 2010 which are indicated by the red line. That  
2 corresponds to the scale, the axis on the right-hand side, from  
3 0 to \$3.25. And the trading volume is represented by the blue  
4 columns over the course of the chart, which correspond to the  
5 scale on the left-hand side.

6 Q. For example, in what is reflected in the chart as occurring  
7 with respect to February 16, 2010?

8 A. On that date, as you can see, there is a very tall column,  
9 blue column, to indicate that the trading volume on that day  
10 was more than 4.25 million shares, while the closing price on  
11 that day was approximately 50 cents.

12 Q. There is a text box on that chart indicating something  
13 called a stock split. What is the source of that information?

14 A. That also came from Bloomberg as well, because Bloomberg  
15 also maintains information regarding corporate events. A stock  
16 split is simply a corporate event where the number of shares as  
17 well as the stock price changes, however the value of the  
18 investment does not change.

19 A forward stock split would be one share may be broken  
20 up into numerous shares, so there are more shares but each  
21 share is worth less than before. Whereas, in a reverse stock  
22 split, which is what occurred on this date here, you have a  
23 number of shares that are combined into less shares, however  
24 the stock price for each share is worth more. However, again,  
25 the value of the investment does not change at all, it's the

D36rlev4

Melley - direct

1 same before and after a stock split.

2 Q. Did there come a time when you were asked to focus on  
3 specific time periods reflected in this 3-year chart?

4 A. Yes, there was.

5 Q. What were you asked to do with respect to those specific  
6 time periods?

7 A. I was asked to provide more selected time frame charts  
8 again showing the closing price as well as the analysis of the  
9 volume and also then looking at the other two sources of  
10 information that we have discussed, the FINRA materials and  
11 also looking at what was happening in certain selected trading  
12 accounts during those selected periods.

13 Q. What is the first period that you were asked to look at?

14 A. The first period concerned August through September 2007  
15 trading in Cardiac Network.

16 Q. I'd like you to turn to Government Exhibit 111-5, if we  
17 could publish that. What is the specific period that you were  
18 asked to look at?

19 A. August 6th through September 4, 2007. This covers only a  
20 closing price analysis of the share price of CNWI.

21 Q. What other information did you add to that chart?

22 A. In addition to the closing price information, there is also  
23 a number of text boxes that indicate the dates of either a  
24 press release or a promotional material or some combination of  
25 the two. Again, those were materials that were collected by

D36rlev4

Melley - direct

1 FINRA.

2 Q. If you saw a press release in FINRA materials, how would  
3 you denote that?

4 A. That would represented by "PR."

5 Q. How about if you saw promotional material in the FINRA  
6 materials that you summarized?

7 A. I would simply list that as the word "promo."

8 Q. What would happen if you saw a press release and  
9 promotional material issued on the same day?

10 A. I would only have both materials listed in one text box to  
11 that day.

12 Q. How would you indicate that?

13 A. It would be indicated as "PR" and "promo."

14 MR. MASTER: Turning to Government Exhibit 111-6,  
15 could we publish that.

16 Q. Does that relate to the same approximately 5-week period?

17 A. Correct.

18 Q. If you could explain to the jury what is reflected in this  
19 chart and what the sources of information were for this chart.

20 A. Again, the source includes the Bloomberg data, in this case  
21 only the volume information, in addition to the third category  
22 we discussed, the actual brokerage account statements that came  
23 from certain firms for certain selected accounts. Each bar  
24 over the course of this time period, the length of the bar  
25 indicates the total market share volume for each day.

D36rlev4

Melley - direct

1           Then, within each day there are two colors  
2 represented. The red, with the corresponding percentage, would  
3 indicate how much of the overall volume for that day is  
4 accounted for, in this case Bedrock Ventures, the account I was  
5 focused on at the time, while the blue bar would represent all  
6 non-Bedrock Ventures trading shares on that particular day.  
7 Again, for each day there is a percentage listed again showing  
8 the percentage of the overall activity that can be attributed  
9 to Bedrock Ventures.

10 Q. Which government exhibits contain the Bedrock Ventures  
11 brokerage account information that you used?

12 A. Exhibits 1217 and 1257, as indicated in the bottom left-  
13 hand corner.

14 Q. Did there come a time in the course of your examination of  
15 those records that you determined the name of the individual  
16 who controlled the Bedrock Ventures account?

17 A. Yes. Fotis Georgiadis.

18 MR. MASTER: If you would publish the first page of  
19 Government Exhibit 1257.

20 Q. Did there come a time when you were asked to try to  
21 incorporate all three sources of information into a single  
22 chart?

23 A. Yes, there was.

24 Q. I'd like you to turn to Government Exhibit 111-3. Is that  
25 the chart that you just described where you integrated all

D36rlev4

Melley - direct

1 three sources of information?

2 A. Correct.

3 Q. What other information did you include in this chart?

4 A. The additions to this chart include the light orange boxes  
5 that show for this period that there was a 292 percent increase  
6 in the price of CNWI shares between August 6th and the high  
7 point during that period on September 5th. Then there was a  
8 subsequent decline in the price of 40 percent between the 5th  
9 of September and the final day of the period, September 14th.  
10 In addition, there is a yellow box to indicate that Bedrock  
11 Ventures generated \$2,632,238.80 in net proceeds from sales of  
12 CNWI between August 10th and September 11, 2007.

13 Q. How did you calculate that \$2,632,000 number?

14 A. By reviewing the trading account statements for Bedrock  
15 Ventures and adding up the purchases and sales over the course  
16 of the period and coming up with a net dollar figure.

17 Q. Explain to the jury, what does the green bar represent and  
18 what do those columns represent?

19 A. The green bar represents the closing price over the course  
20 of time in the selected period, while each daily bar represents  
21 the total volume, as well as within that bar colors  
22 representing Bedrock Ventures' percentage of that total volume.

23 THE COURT: Bedrock is the red?

24 THE WITNESS: Correct, Bedrock is the red. And the  
25 blue represents --

D36rlev4

Melley - direct

1 THE COURT: Everybody else?

2 THE WITNESS: Exactly, all non-Bedrock activity.

3 Q. In addition to the red, there are numbers on those columns.  
4 What does the number represent?

5 A. It represents the percentage of shares of the overall day  
6 that can be attributed to Bedrock Ventures activity.

7 Q. What is the second period of time that you were asked to  
8 look at?

9 A. August 31st through October 9th of 2009.

10 Q. Were you asked to create summary charts concerning those  
11 periods, that period?

12 A. Right.

13 Q. If you wouldn't mind turning to Government Exhibit 111-7.  
14 What is depicted in Government Exhibit 111-7?

15 A. This summary chart shows the closing prices over the course  
16 of the period as well as the dates of any press releases or  
17 promotional materials that were issued concerning CNWI.

18 Q. Turning to the next chart, what is depicted in Government  
19 Exhibit 111-8?

20 A. For the same period of time, the focus here is only on the  
21 daily trading volume in CNWI. Again, the red portion of the  
22 bar indicating the percentage of activity of the overall  
23 volume. Unlike the previous charts concerning Bedrock, the  
24 focus during this period was an account called Date Palm  
25 Capital.

D36rlev4

Melley - direct

1 Q. Did you see any trading activity in the Bedrock Ventures  
2 accounts that you were looking at during this period?

3 A. No.

4 Q. With respect to Date Palm Capital, what is the government  
5 exhibit that you used as the source of the trading data?

6 A. The account statements, brokerage firm account statements.

7 Q. Yes.

8 A. Exhibit number 1213.

9 Q. That is listed on the footer?

10 A. Yes.

11 Q. Did there come a time when you examined the statements for  
12 Date Palm Capital in this Government Exhibit 1213 in the course  
13 of preparing your summary charts?

14 A. Yes.

15 Q. Who is listed as the individual who controls the Date Palm  
16 Capital account?

17 A. David Levy.

18 Q. For some further detail concerning how you calculated these  
19 percentages and red bars, if you wouldn't mind using as an  
20 example September 2, 2009. Do you see a bar there that relates  
21 to September 2, 2009?

22 A. Yes.

23 Q. What number is on that bar?

24 A. That bar reflects that Date Palm Capital was responsible  
25 for 67 percent of the volume on that date.

D36rlev4

Melley - direct

1 Q. If you could explain to the jury how you calculated that 67  
2 percent number.

3 A. I divided the number of shares that were traded in the Date  
4 Palm account which I believe was 179,600 shares. That came  
5 from the account statement. I divided that number into the  
6 total volume for the day, which was, I believe, approximately  
7 268,000 shares.

8 MR. MASTER: If you wouldn't mind pulling up, Mr.  
9 Dinet, the first two pages of Government Exhibit 1213.

10 Q. What is the account?

11 A. Date Palm Capital.

12 Q. Which company?

13 A. BMA Securities.

14 Q. Where is the trade on September 2, 2009 reflected?

15 A. I think you have to go to the next page. If you look under  
16 realized gain/loss detail, the bottom portion, the first line  
17 which has a trade date of 9/2/2009, you see the heading is date  
18 sold or closed. Then there is a quantity amount, 179,600  
19 shares. It's that first line.

20 Q. Below that, what else is reflected?

21 A. Other transactions in the Date Palm Capital account for  
22 that period of time.

23 Q. For which?

24 A. This is a monthly statement for September 2009 for the  
25 account of BMA Securities.



D36rlev4

Melley - direct

1 MR. SHARGEL: Can we know what exhibit this is?

2 THE WITNESS: 1213 I think.

3 THE COURT: 1213 is the answer, Mr. Shargel.

4 Q. How did you then calculate the percentage? What did you do  
5 with that information, for example, for September 2, 2009?

6 A. I divided that number into the total share volume number,  
7 which was called in this case Government Exhibit 101-29, the  
8 Bloomberg data, which has the total volume on each day. I  
9 divided 179,600 into that total number, which I think for that  
10 date was --

11 Q. Take a look at Government Exhibit 101-29.

12 A. For that date on September 2, 2009, the total volume was  
13 268,700 shares.

14 MR. MASTER: Mr. Dinet, if you wouldn't mind pulling  
15 up Government Exhibit 111-4.

16 Q. What is depicted in Government Exhibit 111-4?

17 A. This is a chart that summarizes information from those  
18 three main sources: The closing price, the daily volume  
19 information, as well as the selected account activity of Date  
20 Palm Capital, the press releases and promotional material  
21 dates.

22 In addition, I note that between August 31st and  
23 September 11th there was a 457 percent increase in the CNWI  
24 share price, and then there was a subsequent 212 percent  
25 decline in that price over the remaining days of the period

D36rlev4

Melley - direct

1 from that high point on 9/11.

2 Finally, in the yellow box I indicated for my  
3 calculation of the net proceeds for the Date Palm account that  
4 Date Palm generated \$666,710.65 in net proceeds from sales of  
5 CNWI between September 2nd and the 18th of September.

6 Q. Was there a third period that you were asked to focus on  
7 concerning Cardiac Network?

8 A. Yes, February 2010.

9 MR. MASTER: If you would, Mr. Dinet, pull up  
10 Government Exhibit 111-9.

11 Q. What is depicted in Government Exhibit 111-9?

12 A. It shows over the course of that month the closing price  
13 indicated by the red line as well as whether there were dates  
14 of press releases or promotional materials that had been  
15 gathered by FINRA.

16 Q. Did you do, again with respect to this one-month period, a  
17 second kind of chart that you have been walking through?

18 A. Yes.

19 MR. MASTER: If you wouldn't mind, Mr. Dinet, pulling  
20 up Government Exhibit 111-10.

21 Q. Again, what did you do to create this chart?

22 A. This comes from the brokerage account statement information  
23 1213 as well as the Bloomberg data 101-29, showing the daily  
24 volume and the percentage of Date Palm's activity over the  
25 course of that month.

D36rlev4

Melley - direct

1 Q. Again, were you asked to provide or create that third  
2 category of chart that tried to integrate everything into one  
3 chart?

4 A. Yes.

5 MR. MASTER: Please pull up Government Exhibit 111-2.

6 Q. What is depicted in Government Exhibit 111-2?

7 A. In addition to the information seen on the previous two  
8 charts, this also shows that there was a 79 percent increase in  
9 the Cardiac Network share price between February 3rd and  
10 February 10th as well as a subsequent 182 percent decline in  
11 the price from that high point on the 10th through the 26th of  
12 February. Finally, I also was able to calculate that Date Palm  
13 Capital generated \$535,441.54 in net proceeds from sales of  
14 CNWI during the period.

15 Q. Now let's turn to Banneker, if you wouldn't mind taking a  
16 look at Government Exhibit 110-1. What is depicted in  
17 Government Exhibit 110-1?

18 A. This shows the closing price and daily market share volume  
19 in Banneker between January 2008 and December 2009.

20 Q. What is the source of that information?

21 A. The Bloomberg data 103-45. It also indicates that on the  
22 9th of February 2009 there was a stock split. In this instance  
23 for every share of Banneker after that date, it became 12  
24 shares.

25 Q. On that date what was the trading volume or the market

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Melley - direct

1 share volume of Banneker reflected by the chart?

2 A. A little under 8 million shares.

3 Q. Were you asked again, as with Cardiac, to focus on specific  
4 subsets of that time period that is depicted in Government  
5 Exhibit 110-1?

6 A. Yes, I was.

7 Q. What is the first subset or the first period within that  
8 multiyear period that you were asked to look at?

9 A. July 15th through September 15, 2008.

10 MR. MASTER: If you wouldn't mind pulling up  
11 Government Exhibit 110-4, Mr. Dinet.

12 Q. What is depicted in this chart?

13 A. This shows over the course of that two-month period the  
14 closing price as well as any relevant promotional materials or  
15 press releases concerning Banneker.

16 Q. Were you asked to prepare that second category of chart,  
17 the one that looked at trading volume in specific brokerage  
18 accounts?

19 A. Yes.

20 MR. MASTER: If you wouldn't mind pulling up  
21 Government Exhibit 110-5.

22 Q. What is depicted in that exhibit?

23 A. This shows on a daily basis the total volume as well as the  
24 percentage of volume attributed to certain accounts. In this  
25 case those accounts were in the names of EMC Holdings and

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Melley - direct

1 EZ English.

2 Q. What are the names of the individuals based on your review  
3 of these trading records who are listed as the individuals  
4 controlling those two accounts?

5 A. For EMC Holdings the name I saw was Christian Burnett, and  
6 for EZ English the name listed was Yael Tal.

7 Q. Did you create the third category of information or the  
8 third category of chart for the specific time period?

9 A. Yes.

10 Q. If you wouldn't mind turning to Government Exhibit 110-3.  
11 What is depicted in this chart?

12 A. This shows both the closing price and volume analysis as  
13 previously seen, in addition showing that there was a 234  
14 percent increase in the BANI, Banneker, stock price from July  
15 15th to the high point on August 4th and the subsequent 178  
16 percent decline in the price over the remaining days of the  
17 period. In addition, my analysis of the EZ English and EMC  
18 Holdings accounts showed that they combined to generate  
19 \$268,714.10 in net proceeds from sales of BANI during the  
20 period.

21 Q. Were you also asked to take a look at a second subperiod  
22 during the two-year period covered by the Bloomberg data?

23 A. Yes.

24 Q. Are those dates around the time of the forward stock split  
25 that you just described?

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Melley - direct

1 A. Correct.

2 Q. What specific time period did you look at?

3 A. January 26th through February 25th of 2009.

4 MR. MASTER: If you wouldn't mind pulling up  
5 Government Exhibit 110-6.

6 Q. What is depicted in this chart?

7 A. The closing price analysis over the course of the time,  
8 month, as well as any relevant Banneker-related press releases  
9 or promotional materials and those dates.

10 Q. Were you asked to also analyze this collection of trading  
11 accounts for trading data concerning Banneker during this time  
12 period?

13 A. I was.

14 MR. MASTER: If you wouldn't mind pulling up  
15 Government Exhibit 110-7.

16 Q. Which accounts did you use to prepare your trading volume  
17 analysis or trading volume summary chart that is depicted here  
18 in Government Exhibit 110-7?

19 A. The accounts focused on here included DML Marketing as well  
20 as EZ English.

21 Q. What is the name of the individual who is listed as the  
22 person controlling DML Marketing?

23 A. Donna Levy.

24 Q. Did there come a time when you were asked to prepare that  
25 third category of chart that integrated all three sources of

D36rlev4

Melley - direct

1 data?

2 A. Yes.

3 Q. I'd like you to now turn to Government Exhibit 110-2. Is  
4 that that third category of chart?

5 A. Correct.

6 Q. Did you also provide the price increase and decrease data?

7 A. Yes.

8 Q. What did your calculations determine?

9 A. That between January 26th and February 6th there was a 775  
10 percent increase in the price. Then there was a subsequent  
11 decline in the price of 5,150 percent from the date February  
12 6th through the 25th of February, which also includes the stock  
13 split listed on February 9th. In addition, I calculated the  
14 net proceeds to show that DML Marketing and EZ English combined  
15 to generate \$694,895.06 from sales of BANI over the course of  
16 the period.

17 Q. Now let's turn to the third company that you were asked to  
18 analyze and prepare summary charts concerning, and that is  
19 Greenway Design Group.

20 MR. MASTER: If you wouldn't mind pulling up  
21 Government Exhibit 113-1.

22 Q. What is depicted in Government Exhibit 113-1?

23 A. This covers both closing price and daily market share  
24 volume between January and December 2011 in Greenway Design  
25 Group. Again, this comes from the Bloomberg data, Government

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Melley - direct

1 Exhibit 104-28.

2 Q. As with the prior two stocks, did there come a time when  
3 you were asked to combine two or more categories of data for  
4 specific subsets of time?

5 A. Yes.

6 Q. Turning to the first subset of time, what was that?

7 A. January 25th through April 29, 2011.

8 Q. For that roughly 3-month period, what did you do?

9 A. As I did earlier, I analyzed the closing price data as well  
10 as the volume data and then looked at the FINRA materials and  
11 also the brokerage account statements and summarized all that  
12 data.

13 MR. MASTER: If you wouldn't mind pulling up 113-4,  
14 Mr. Dinet.

15 Q. What is depicted in Government Exhibit 113-4?

16 A. This contains any day there was a press release or  
17 promotional material put out -- again, this comes from the  
18 FINRA materials -- as well as the closing prices over the  
19 3-month period.

20 Q. Were you asked to analyze certain accounts and calculate  
21 what percentage of the total trading volume those accounts  
22 represented?

23 A. Yes.

24 Q. If you wouldn't mind turning to Government Exhibit 113-5.  
25 What is depicted in Government Exhibit 113-5?



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Melley - direct

1 A. This shows that volume analysis with the focus being on an  
2 account in the name of EZ English and EZ English's percentage  
3 on a daily basis when it traded in GDGI.

4 Q. In whose name is this EZ English account listed?

5 A. Yael Tal.

6 MR. MASTER: Your Honor, at this time I'd like to read  
7 a stipulation. It is marked as Government Exhibit S3.

8 THE COURT: All right.

9 MR. MASTER: "It is hereby stipulated and agreed by  
10 and between the United States of America, by Preet Bharara,  
11 United States Attorney, Howard S. Master and Carrie H. Cohen,  
12 Assistant United States Attorneys, of counsel, and Donna Levy  
13 and David Levy, the defendants, by their counsel, Howard  
14 Srebnick, Scott Srebnick, and Alex Arteaga-Gomez, Esqs., for  
15 Donna Levy, and Gerald L. Shargel and Ross M. Kramer, Esqs. for  
16 David Levy, that if called to testify, Paul Bunnell would  
17 testify as follows:

18 "Paul Bunnell is the accountant for David Levy and  
19 Donna Levy. David Levy provided documents to Paul Bunnell  
20 related to the following entities and Paul Bunnell prepared tax  
21 returns for tax year 2011 for the entities as indicated below."

22 Mr. Dinot, if you wouldn't mind publishing the second  
23 page of that. I'm going to read the chart.

24 There is a chart on the second page. I'm going to  
25 publish that for the jury. The columns are "State of

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Melley - direct

1 Incorporation," "Name of Entity," and "Tax Return Filed." It  
2 indicates three Delaware corporations: Allegro West Marketing,  
3 Inc.; Miracle Marketing, Inc.; and Date Palm Capital LLC.

4 It lists several Florida corporations: Allegro  
5 Marketing & Media Corp.; Allegro Media Enterprises, Inc.; Date  
6 Palm Capital Corp.; DML Marketing Corp.; DML Marketing & Media  
7 Corp.; EZ English, Inc.; Fitzwilliams Investment, Inc.;  
8 Fitzwilliam Investment, Inc.; Florida Media Corporation;  
9 Miracle Marketing, Inc.; Miracle Marketing & Media Corp.;  
10 Miracle Marketing Specialties Corp.; Should've Been Romeo, Inc.  
11 It lists a Nevada corporation Fitzwilliams. Then it lists  
12 three Wyoming corporations in the names of DML Marketing,  
13 Fleetwood Media Corp. and Melody Holdings.

14 Then it indicates whether a tax return was filed in  
15 the name of those entities for 2011, and it indicates, among  
16 other things, that the tax return was filed in the name of  
17 EZ English by Paul Bunnell for tax year 2011 based on provision  
18 of documents by David Levy.

19 Then it states in paragraph 3, "Government Exhibit  
20 705-2 is a true and accurate copy of a report of foreign and  
21 financial accounts maintained by David Levy that was signed by  
22 David Levy on or about September 12, 2012, and maintained by  
23 Paul Bunnell in the course of his regularly conducted business  
24 activity. Government Exhibit 100-20 is true and accurate copy  
25 of an email that David Levy sent to Paul Bunnell on or about

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Melley - direct

1 April 15, 2011."

2 Finally, your Honor, "It is further stipulated and  
3 agreed that Government Exhibit 705-2 and 1500-20 may be  
4 received in evidence at trial and that the stipulation may be  
5 received in evidence at trial." Signed by the parties.

6 THE COURT: The stipulation and documents referred to  
7 are received in evidence.

8 MR. MASTER: Thank you, your Honor.

9 (Government's Exhibits 705-2 and 1500-20 received in  
10 evidence)

11 BY MR. MASTER:

12 Q. Getting back to the EZ English account volume referred to  
13 during this time period, Government Exhibit 113-5, could we put  
14 that up. I want to ask you a couple of questions about the  
15 first portion of the chart. There is an indication that with  
16 respect to certain dates the number 100 percent appears. Could  
17 you explain to the jury what the chart means when it says 100  
18 percent.

19 A. That on those dates 100 percent of the volume can be  
20 attributed to trading by EZ English.

21 Q. For example, on January 27, 2011?

22 A. There were 500 shares that were traded, and that's what was  
23 represented in Government Exhibit 104-28, the Bloomberg  
24 activity for GDGI. And an analysis of the EZ English account,  
25 Government Exhibit 1258, shows that on that date EZ English

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Melley - direct

1 sold 500 shares.

2 Q. Therefore?

3 A. I divided 500 into 500 to get 100 percent of the activity  
4 can be attributed to EZ English.

5 Q. Did there come a time when you were asked to provide that  
6 third category of chart with respect to this time period?

7 A. Yes.

8 MR. MASTER: If you wouldn't mind pulling up  
9 Government Exhibit 113-2.

10 Q. What is depicted in this exhibit?

11 A. This summarizes the closing price and volume activity as  
12 well as showing the 60 percent price increase in GDGI between  
13 the 18th and 28th of March and the subsequent 405 percent  
14 decline in the price over the remaining days of the period and  
15 the fact that EZ English generated \$4,989,274.35 in net  
16 proceeds of sales of GDGI during the period.

17 Q. Sir, was there a second subset time that you were asked to  
18 look at concerning Greenway Design Group?

19 A. Yes.

20 Q. What period of time was that?

21 A. That concerned primarily August 22nd through September 23,  
22 2011.

23 MR. MASTER: If you wouldn't mind pulling up  
24 Government Exhibit 113-6, Mr. Dinet.

25 Q. What is reflected in this chart?

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1 A. The closing prices over the course of that time frame.

2 Q. Is there a reason why there is no indication of press  
3 releases or promotional material on this chart?

4 A. I was not provided with any materials that FINRA had  
5 collected during this time period.

6 Q. If you wouldn't mind turning to Government Exhibit 113-7.  
7 What is depicted in that exhibit?

8 A. This is the trading volume analysis over that same period  
9 of August 22 through September 23rd, again showing any activity  
10 and percentages of the overall activity that would be  
11 attributed to EZ English.

12 Q. Is that the same account that was trading in that first  
13 time period?

14 A. Yes.

15 Q. Again, were you asked to provide that third category of  
16 chart for this time period?

17 A. Correct.

18 MR. MASTER: Please pull up Government Exhibit 113-3.

19 Q. What additional information did you provide in this chart  
20 beyond integrating those three categories of information?

21 A. That there was a 73 percent increase in the GDGI share  
22 price between the 22nd of August and September 12th, and then a  
23 subsequent 96 percent decline in the price over the remaining  
24 days of the period, as well as the fact that the EZ English  
25 account generated \$741,474.67 in net proceeds from GDGI sales

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Melley - direct

1 over the course of the period.

2 Q. Now turning to the fourth company that you were asked to  
3 analyze and provide summary charts for, Emerging World Pharma?

4 MR. MASTER: If you wouldn't mind pulling up  
5 Government Exhibit 112-1.

6 Q. What is depicted in that exhibit?

7 A. This covers closing price and volume activity in EWPI, the  
8 ticker symbol for Emerging World Pharma, between January and  
9 December 2010.

10 Q. What is the source for that information?

11 A. The Bloomberg data by GX-105-52.

12 Q. Were you also asked to look at one specific subset of time  
13 and provide more detailed chart concerning that subset?

14 A. Yes, March 1st through May 22nd -- I'm sorry -- may 21,  
15 2010.

16 MR. MASTER: If you wouldn't mind turning to  
17 Government Exhibit 112-3.

18 Q. What is depicted in this 7-week time period?

19 A. The closing prices and any relevant EWPI press releases or  
20 promotional materials that FINRA had gathered and the dates of  
21 those materials.

22 Q. Turning to Government Exhibit 112-4, what is depicted in  
23 that chart?

24 A. On a daily basis the overall market share volume as well as  
25 the percentage of that daily volume that could be attributed to

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Melley - direct

1 an account in the name of Petrobond.

2 Q. What is the name of the individual who was on Petrobond  
3 trading accounts that you looked at as receiving those  
4 accounts?

5 A. Clarke Coleman.

6 Q. Were you asked to provide another chart that integrated all  
7 of those categories of information?

8 A. Yes.

9 Q. If you wouldn't mind turning to Government Exhibit 112-2.  
10 Is that the chart where you integrated all the sources of  
11 information?

12 A. Correct. This, in addition to the other information  
13 previously discussed, the price and volume, also shows that  
14 there was a 175 percent increase in EWPI share price between  
15 March 1st and April 6th, and then there was a corresponding 175  
16 percent decline in the price over the remaining days of the  
17 period, and that Petrobond generated \$686,495.52 in net  
18 proceeds from sales of EWPI.

19 Q. What was the top, the peak price of that period that you  
20 were asked to look at?

21 A. The peak price, which occurred on April 6th, was I believe  
22 approximately 71 cents.

23 MR. MASTER: Just a moment, your Honor.

24 Nothing further, your Honor.

25 THE COURT: Mr. Shargel?

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Melley - direct

1 MR. SHARGEL: Mr. Srebnick will handle it.

2 THE COURT: Mr. Srebnick. I'm sorry.

3 CROSS-EXAMINATION

4 BY MR. SREBNICK:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. My name is Howard Srebnick. We have never spoken before  
8 you and I, have we?

9 A. No.

10 Q. Good afternoon to you.

11 A. Same to you.

12 Q. We only have a few minutes before 5 o'clock. I'd like to  
13 take that time to define a few of the terms that you have used  
14 today so that we all have an agreed understanding of what we  
15 are talking about. You have been showing us some charts  
16 regarding the volume of shares of stock that presumably were  
17 bought or sold, so I'd like to first understand together what  
18 we mean by stock. Are we talking now about a share of  
19 ownership in a company that is publicly traded?

20 A. Correct.

21 Q. Is that to be distinguished from stock perhaps in a company  
22 that is privately held, like a mom-and-pop shop that doesn't  
23 trade its shares publicly?

24 A. Correct.

25 Q. There is a significant difference between stock that is



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Melley - cross

1 available on the public market versus stock that is privately  
2 held in a private company, big difference, right?

3 A. I'm not sure in terms of what difference you're talking  
4 about.

5 Q. Fair point. A privately held company, small mom-and-pop  
6 shop, which has stock, the owner of the stock, if he or she  
7 wants to sell the company, needs to somehow find a potential  
8 buyer. There is no active market for that stock, correct?

9 A. True.

10 Q. If I build up my company, I own a hundred percent of the  
11 shares in my company, and I want to retire and sell the shares  
12 in my company, I have to find somebody who is interested in  
13 buying my stock and perhaps even running my business, right?

14 A. As holding shares of a private company, yes, you need to  
15 find a buyer in order if you're looking to sell those shares,  
16 which may be more difficult than on the public marketplace.

17 THE COURT: FINRA has nothing to do with such  
18 companies, right?

19 THE WITNESS: FINRA has no jurisdiction over publicly  
20 traded companies or private companies. It just regulates the  
21 trading and sale.

22 Q. I want to get to the word "trading" in a moment, but I want  
23 to make sure we understand what it is that is being traded.  
24 Those of us that are familiar with a mom-and-pop shop and stock  
25 in a private company where there is no trading or market in

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Melley - cross

1 that stock, really the only way to sell it is to find a buyer  
2 for it, right?

3 A. Find a buyer for it or have that company become a publicly  
4 traded company.

5 Q. OK. You're ahead of me, but that's where we are going with  
6 all of this. A private company that ultimately wants to be  
7 able to, as an owner of company, sell his or her stock over  
8 time either, one, needs to find a private buyer of that stock  
9 or take the company public so that the stock can be traded in  
10 some sort of market, perhaps?

11 A. Correct.

12 Q. Good. A stock that is not publicly traded would not be  
13 liquid, is that a fair statement?

14 A. In terms of having to find a buyer of those share, yes.  
15 Liquid or liquidity refers to the ease at which you're able to  
16 purchase and sell shares.

17 Q. Typically, is it a fair statement to say that publicly  
18 traded stock is more liquid than privately held stock?

19 A. I would say generally yes, that is the case.

20 Q. I want to talk to you and ask you some questions about the  
21 value of the stock, the price of the stock. OK? When we talk  
22 about a stock of a private company where it is not publicly  
23 traded, how does one determine the price of a stock? You have  
24 talked to us about the prices of stock. What is the price of a  
25 stock that's not publicly traded, that's privately held?

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Melley - cross

1 A. The price would have to be determined by whatever the  
2 seller believes they could sell it at or what they are  
3 interested in selling it at and whether there is any attraction  
4 of someone buying it at that price. They may look at a number  
5 of different factors, but that's generally where it would come  
6 out.

7 Q. Would it typically include, when you say factors to  
8 determine a price, what is known as the fundamentals of the  
9 company?

10 A. That would be one factor, the financial aspects of it, what  
11 the future potential is regarding the product. There could be  
12 a number of different things.

13 Q. So the owner of the stock, in trying to sell his or her  
14 stock, would have to show the buyer, perhaps, why that stock  
15 has value, right?

16 MR. MASTER: Objection, your Honor.

17 THE COURT: Sustained.

18 Q. I'd like to now ask you some questions about the price of  
19 stock in the publicly traded market as you have been describing  
20 to us today. The price of stock on the publicly traded market,  
21 like everything else, is determined by supply and demand, is  
22 that a fair statement?

23 MR. MASTER: Objection.

24 THE COURT: Sustained.

25 Q. You were describing for the jury, through your charts,

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Melley - cross

1 trades. Are those on the pink sheet markets or through the  
2 pink sheets?

3 A. For these four stocks they were traded on the over-the-  
4 counter what is considered the pink sheet market, yes.

5 Q. If you could again describe for us what is the pink sheet  
6 so we all understand that term.

7 A. Pink sheet refers to over-the-counter securities that are  
8 traded for less than \$5 where there often are not the same  
9 number of investors to purchase and sell the stock that you may  
10 find on something like the NASDAQ Stock Market or the NYSE.

11 Q. Is there for these pink sheet stocks an actual market? Is  
12 there a trading market for them?

13 A. Yes. The pink sheet market, today it's called OTC Markets  
14 Group, but commonly it's always been referred to as the pink  
15 sheet market. It's a quotation service, meaning it's a  
16 platform where brokerage firms can come and look to buy and  
17 sell shares of the stock.

18 Unlike the NASDAQ Stock Market, where it is the  
19 company itself that is responsible for exposure in order to be  
20 traded, the pink sheet arena is an arena solely where the  
21 brokerage firms offer to buy and sell shares of various  
22 publicly traded companies that are at this level, the pink-  
23 sheet level.

24 Q. If a member of the public wants to find out the price of a  
25 particular stock that's a pink sheet stock, where does a member

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Melley - cross

1 of the public go to find that price?

2 A. They could go to a number of different avenues, one being  
3 the Internet. They could go to the OTC Markets Group site.  
4 You could also find it on Bloomberg, Yahoo! Finance. There are  
5 a number of different available platforms to see price and  
6 volume information.

7 Q. Does one need to have some sort of subscription to gain  
8 access to that type of information?

9 A. In order to gain access to?

10 Q. Pricing information.

11 A. It depends on how real-time you need to see that  
12 information. If you're looking at what the last sale is as  
13 well as the competing quotes, which are bids and asks or prices  
14 at which firms are interested in buying or selling the stock,  
15 then you may need a subscription. But in order to see general  
16 information on a daily basis, you can go to the Internet, a  
17 number of sites, and see what it's currently traded at.

18 Q. Now I'd like to ask you some questions about the volume of  
19 stock that you were discussing with the jury vis-a-vis some of  
20 these companies. I believe you started with Cardiac Network.  
21 I'd like to turn our attention, if I could, to Government  
22 Exhibit 111-3.

23 THE COURT: Can you put that up on the board, please.

24 MR. SREBNICK: Thank you so much.

25 Q. It appears that what this chart does is correlate volume,

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Melley - cross

1 price, and promotions that were published as you have put them  
2 all together on one chart. Is that fair?

3 A. This shows on a daily basis what actually happened to both  
4 the closing price and trading volume in the stock, as well as  
5 overlaying any relevant promotional or press release materials.

6 Q. There appear to have been, according to your chart, a  
7 series of promotions starting with -- I think the date down in  
8 the bottom left would be August 9th of 2007, is that right?

9 A. Correct, there is a press release on that date.

10 Q. Then there is another event, a promotion, which occurs  
11 according to the chart on August 10th? I don't have a pointer.

12 A. Yes, correct.

13 Q. Oh, we have one here, great. I'm in this vicinity here.

14 A. OK.

15 Q. It appears that on the day that there was a promotion,  
16 there appears to be a higher level of trading activity than  
17 before the promotion on that same week, correct?

18 A. Yes.

19 Q. Did you perform an event study to determine whether it was  
20 the promotion that caused that increase in trading activity  
21 that day?

22 A. No.

23 THE COURT: Mr. Srebnick, would this be a convenient  
24 place to break? It's 5 o'clock.

25 MR. SREBNICK: Of course.

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Melley - cross

1 THE COURT: Ladies and gentlemen, this is the end of  
2 the day. We will resume tomorrow morning at 10 o'clock. I  
3 know somebody asked questions about the weather. We have a  
4 weather monitoring service. We have had no reports on that.  
5 Let me give you a call-in number in case it changes.  
6 212-805-0515. Mr. Ovalles has this if he didn't give it to  
7 you. 212-805-0515.

8 Please remember my instructions. Don't discuss the  
9 case. Don't do any research. Keep open minds. And have a  
10 nice ride home tonight. We'll see you tomorrow morning. Try  
11 to give yourself a little bit more time. We will be serving  
12 the continental breakfast starting at 9 o'clock, and we will  
13 resume at 10:00. Thanks. Good night.

14 (Jury not present)

15 THE COURT: You can step down, Mr. Melley. You are on  
16 cross-examination now, so please don't talk to the government  
17 about your testimony. All right?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Thank you very much.

20 (Witness not present)

21 THE COURT: Anything to take up?

22 MR. SREBNICK: I have one matter, Judge, if I may.

23 THE COURT: Yes, Mr. Srebnick.

24 MR. SREBNICK: Thank you, Judge.

25 THE COURT: Please be seated.

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Melley - cross

1 MR. SREBNICK: Judge, I'm not from this district, so I  
2 was not familiar with the procedure of jury selection. I asked  
3 my brother to help me with some research. I wanted to let the  
4 Court know what I found.

5 There appears to be Second Circuit case law that is  
6 divided on the issue about the peremptory challenge. I would  
7 like to cite to the Court United States v. Blouin, 666 F.2d 796  
8 (2d Cir. 1981), which appears to approve the system that your  
9 Honor has adopted, although that appears to conflict with an  
10 earlier Second Circuit case, Carr v. Watts, 597 F.2d 830 (2d  
11 Cir. 1979). Then I was suggested to read United States v.  
12 Rick's, which I read quickly, a Fourth Circuit case, 776 F.2d  
13 455, (7th Cir. 1985).

14 Given what I view as an ambiguity or potential  
15 conflict in the Second Circuit law, I would like to preserve  
16 that issue for appellate review.

17 THE COURT: It's kind of late for that. We picked the  
18 jury. The opportunity to correct any deficiencies, which I  
19 disclosed in advance how we were going to select the jury, the  
20 time has passed. You have your record. I don't know if you  
21 made the objection, I don't know if you did, in time for me to  
22 cure whatever deficiencies might have existed. Your remarks  
23 are duly noted. Ms. Cohen?

24 MS. COHEN: I was going to note that your Honor  
25 informed the parties how you were going to conduct jury



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Melley - cross

1 selection and that the defense had no objection.

2 THE COURT: That is my recollection. What is the  
3 Fourth Circuit say?

4 MR. SREBNICK: It's not exactly the same scenario.  
5 That's why I'm not marrying myself to it. I didn't get to read  
6 it carefully. It's an interesting question.

7 THE COURT: There is quite a variation. I tried a  
8 case not too long ago with two lawyers from the West Coast.  
9 They had all kinds of things they do on the West Coast, but we  
10 don't do 'em here.

11 MR. SREBNICK: Respectfully, your Honor, thank you for  
12 letting me address the Court.

13 THE COURT: Thank you, Mr. Srebnick.

14 Anything else to take up?

15 MS. COHEN: Your Honor, depending on the weather, we  
16 have several witnesses flying in from out of town. We are  
17 hoping to get everyone here on time, but it may be the fact  
18 that on Thursday afternoon or Friday afternoon we have gone a  
19 little short on witnesses. I just wanted to alert the Court to  
20 that.

21 THE COURT: Two inches of snow is going to do all  
22 this?

23 MS. COHEN: It may or may not, because people's  
24 flights may or may not get canceled. I just wanted to inform  
25 the Court. We are hoping to fill the days.

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Melley - cross

1 THE COURT: Who are the witnesses who may testify that  
2 I'm looking at the 3500 material on?

3 MS. COHEN: Your Honor, that would be Alan Weiner.  
4 Right now he was scheduled to testify tomorrow, but I don't  
5 know if he is going to make it in or not.

6 THE COURT: Where is he flying from?

7 MS. COHEN: He is flying from Los Angeles on a red-  
8 eye, your Honor. They are already canceling a lot of flights,  
9 it's been reported to me. I'm not sure he will get on the  
10 flight or not. He also has a prior commitment Friday afternoon  
11 in Atlanta. I'm just not sure even, if he gets here, if he  
12 will get on and off the stand on time. We may have to put him  
13 on on Monday.

14 MR. SHARGEL: Judge, I'm not quarreling, but this is  
15 the first I'm hearing of this Mr. Weiner being a witness this  
16 week. I have the list. There is no need to have a dispute  
17 about it. All I'm asking for is an accurate list as to who is  
18 coming next during the course of this week. I don't think that  
19 is asking for too much.

20 THE COURT: I don't think it is, either.

21 MS. COHEN: It's not.

22 THE COURT: I know it's not.

23 MS. COHEN: My memory, your Honor, is that I told  
24 defense counsel several times he might come this week.

25 THE COURT: Ms. Cohen, do you have an alternative plan

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Melley - cross

1 if the witnesses can't fly in so we don't waste time with the  
2 jury? It's pretty clear that to the extent we slip into the  
3 final week of March, we are going to have problems with  
4 religious observance.

5 MS. COHEN: Your Honor, we are doing everything we can  
6 to fill the gaps with individuals that are already here or  
7 within the tri-state area. A lot of our witnesses are,  
8 unfortunately, in California and Florida. We have flown in  
9 those that we can early to testify this week, but we couldn't  
10 account for the snowstorm. I don't know that that will happen  
11 at all, your Honor. I just want to alert the Court in case we  
12 run an hour or two short on Thursday or Friday, which is all I  
13 think it will be.

14 THE COURT: You are making alternative plans to get  
15 other witnesses in who are not subject to travel conditions?

16 MS. COHEN: We are, your Honor, but there are not a  
17 lot of those.

18 THE COURT: We will have a short form order for you on  
19 the 3500 material. We are just about completed with our  
20 review, the ex parte review that we have to conduct under  
21 3500(b). We will have that for you by the close of -- well,  
22 you will have it before you go home tonight. We'll give you an  
23 email.

24 Anything else to take up? See you at 10 o'clock.

25 (Adjourned to 10:00 a.m., March 7, 2013)

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